

# Canadian Government and Politics

by

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## P R E F A C E

This book has been written to fill a long felt need for a description and analysis of Canadian political institutions. Attention is therefore centred on organs of government, constitutional problems and political processes rather than on economic policies and social purposes. The student of politics is, of course, as much concerned with the ends that government seeks as with the methods of its operation; but, as there seems to be no lack of popular and learned discussion of ends and goals, it has been thought desirable to concentrate on the more neglected side of governmental machinery. In this volume it is assumed that political purposes and objectives are either self-evident or are comparable to those in similar countries. Where controversial issues are involved, the writer has sought to treat them on the basis of underlying assumptions that he judges to have widest acceptance. It has been thought advisable to devote little or no space to those phases of war government that may be deemed transitory.

Being designed for those commencing the study of Canadian public affairs, this volume is an elementary or introductory one in the sense of not pretending to be definitive; it is therefore presented without the trappings and *minutiae* of academic scholarship, such as footnotes, citation of authorities on each point, etc. But it is not intended to be elementary in the sense of omitting consideration of some of the more difficult and complex topics. Not the least useful feature of this book, it is hoped, is the fairly extensive bibliography that is appended to each chapter to assist those who wish to pursue these matters more thoroughly. Comparison with British and American institutions is frequently introduced, not only because the constitutional systems of Great

Britain and the United States have exercised a profound influence over Canada, but also because comparison is often the most effective way of indicating the distinctive Canadian principles and practices. It may be expected, too, that the comparative treatment will aid those familiar with British and American systems to understand the Canadian and will assist Canadian readers in appreciating the broader aspects of their constitutional and political problems.

In the absence of an adequate authoritative literature, the author has occasionally found it necessary to advance views that are not completely accepted. Every effort has been made to provide intelligible explanations of what are often complicated phenomena. A volume of this kind will inevitably contain errors and misinterpretations. The author desires to express his thanks to those painstaking gentlemen who have read the manuscript and have suggested corrections and comments and to the government officials who have been most courteous and prompt in supplying information or documents. Needless to say, all deficiencies that remain are the sole responsibility of the writer. If this little book does not clarify some matters, it is hoped that it will at least stimulate investigation of numerous branches of the subject that have hitherto been neglected.

H. McD. C.

Winnipeg

July 1, 1944

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## PREFACE TO THE REVISED EDITION

The continuing demand for this book indicates that despite its evident limitations it still serves "the long felt need for a description and analysis of Canadian political institutions." Accordingly, a rather extensive revision of the text has been made in order to bring it up to date with respect to post-war conditions. No serious change of order or presentation has been made, though important additions deal with new political and constitutional developments in parliamentary representation, Dominion-Provincial relations, administrative arrangements, judicial appeals, the accession of Newfoundland, and other public issues that have come to the fore in the past five years.

H. McD. C.

April 1, 1950.



## CHAPTER I

### PRELIMINARY CONSIDERATIONS

#### *Is Canada A State?*

As one of the three great countries of the North American continent, Canada holds a position of importance in world affairs. She exceeds both the United States and Mexico in area, stands second in economic wealth, though third in population. The status of the United States and Mexico, however, is unquestioned; they are "states," and this is likewise the case with lesser American countries north of the equator. There are, nevertheless, some areas that are not states. British Honduras is a British colony, Alaska and the Panama Canal Zone are under American control, and several islands are subject to foreign rule. Doubt is often expressed as to whether Canada is properly speaking a state, though few would actually apply the terms "colony" or "dependency" to her. This is not simply a technical matter of legal definition; it has important practical consequences. On it rest such issues as Canada's freedom to conduct her internal affairs entirely according to her own determination and the dependence of her destiny on the will of others. To the student of government this question is important because, if Canadian policy is determined otherwise than in Canada, the study of Canadian government and politics would not be complete without consideration of such external authority and the influence it exerts in Canada.

A state, it is said, must possess territory, population, government, and independence. Certainly Canada has definite territory, a settled population, and organized government. If there is any doubt about her statehood, it lies in the matter of independence (or sovereignty, as it is known to lawyers). Sovereignty is the final power of decision, supremacy, or independence.

The City of Toronto, for example, possesses a definite area, population, and government. But Toronto is not a state; nor, indeed, is the Province of Ontario, of which Toronto is the capital. These are not states because they are either subordinate to higher authority or are parts of a larger whole which has the final power of ultimate decision. Is the Dominion of Canada similarly subordinate to any other authority or also a part of a supreme larger whole? If so, then Canada is not truly a state. This question has agitated controversialists for several years, both as to whether Canada is or is not subordinate to some other authority and as to whether she ought or ought not to form part of a larger whole.

The answer to this question clearly depends on the strictness with which the terms are used. There must be some degree of flexibility. Clearly statehood, as defined above, is not lost because some boundary line is uncertain or improperly marked, or because the government is in temporary confusion or disturbed by civil turmoil, or because part of the populace is migratory or is claimed by some other state. Nor does statehood require complete freedom of action. No country is entirely independent. Apart from the inherited traditions and domestic divisions which impede free choice, the physical environment everywhere imposes numerous restrictions on the several communities of the world. The very existence of other peoples likewise adds limitations to each country. The most independent state is influenced by the conduct of its neighbors, for even if it is "self-sufficient" and not affected by their buying and selling or not buying and selling commodities, it will be involved in the manner in which the others carry out their obligations and undertakings in war and peace. It is not necessary, therefore, to require that a state should act as if no other people existed. The most we can ask is, Are the people of Canada, through their own government and within the limits wherein freedom can operate, as free to make their own choices and adaptations to changing events as the peoples of countries known as "states"?



The tests of sovereignty and independence are chiefly to be found in what a state may do. An independent state is recognized by other states as holding a status of equality with them. It may send and receive diplomatic envoys, participate in international conferences, enter into treaties and agreements with other states, and—as the culminating point of sovereignty—engage in war or attempt to remain neutral while other states are at war. Canada appears to have done all these things. She has exchanged ministers with several of the most important countries; she was a member of the League of Nations and is one of the original participants in the United Nations; she has concluded several treaties and has negotiated many agreements with other states. On September 10, 1939, she declared war on Germany in her own fashion and at her own time, and was recognized as a neutral until this step was taken. In practice, then, Canada acts as an independent, self-governing country and has been recognized by other states as if she were a sovereign state.

Yet, despite this apparent practice of sovereign statehood, there are some curious aspects of the Canadian position which might lead to some doubt as to full statehood. Canada has a monarchical form of government, but there is no Canadian king, the formal "Head of the State" is the king of another state—the United Kingdom of Great Britain and Northern Ireland—and all Canadian citizens are subjects of His Britannic Majesty just as much as Englishmen or New Zealanders. Moreover, the chief document which figures in the Canadian constitution was not merely passed as a statute of the British Parliament but some of it may still be amended only by that body. Then, too, there is the fact that until recently certain judicial appeals might be taken from the Supreme Court of Canada to the Judicial Committee of the British Privy Council at Westminster. These are clear examples of an external influence regularly exerted over Canadian internal affairs.

Now in each of these cases it must be stated that the external influence is either purely formal or is continued at Canada's

own wish under conditions which will have to be studied later in more detail. Other states have shared one Head; and, indeed, at two other periods of history the monarchs at the Court of St. James have been held by England in common with Scotland (1603-1707) and with Hanover (1714-1837), giving rise to comparable questions of common allegiance and citizenship. The important thing for us to note is that the King is advised on Canadian affairs exclusively by Canadian officials. And so far as the British Parliament's function in amending the Canadian constitution is concerned, this is now admittedly formal. It would be unthinkable for the British Parliament to refuse changes sought by Canada or to make others which had not been sought by Canada. On the other hand, the capacity of the British Privy Council to decide judicial appeals, though a very real power, was fully dependent on Canadian will. Indeed, these appeals—already confined to civil cases—were completely abolished by Canadian legislation in 1949.

All the restrictions on Canada's full statehood, of which the above are the chief—are related to her connection with Great Britain and are relics of the time when Canada was a subordinate portion of the British Empire. Perhaps it should be remarked here that there never was a state known as the British Empire, just as there is no state known as the American empire. The sovereign state (from 1801 to 1927) was the United Kingdom of Great Britain and Ireland, and the British Empire was a loose, popular term for the total aggregate of numerous possessions, colonies, dependencies and protectorates which have been at various times under the control of this state. Some of these dependencies have attained different degrees of independence. Ireland and Burma have formally severed their connections; but India and Pakistan, though now republics, are still associated with the British Commonwealth. Canada is one of the former colonies which have acquired independence of action without formally proclaiming a break of the old imperial ties or without placing the new relationship on a treaty basis. By British law Canada is not a colony, dependency or protectorate, though she

has never been declared a "state". Until 1926 the position rested chiefly on special usages and practices, but in that year a comprehensive statement of principles was made at an imperial conference of prime ministers of Great Britain, the Irish Free State, Canada, Australia, South Africa, New Zealand, etc. It was then stated that these countries "are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." This was an epoch-making declaration, though it created a curious situation. Canada is "within the British Empire" (which, however, is not a state), but is "equal in status" to Great Britain (which is the former state). Canada is "freely associated" as a "member" of the British Commonwealth of Nations. There is no state known by the latter name, which is evidently that of a special or British "League of Nations". The clear purpose of the declaration of 1926 was to elevate the "Dominions" to statehood so far as this could be done without severing the historic connection and without abandoning the common use of one king as formal head of the several states.

The imperial conference which announced this status was not a law-making body and had no international standing. The British Parliament was the recognized legislature for the one state which was then in existence. Accordingly, this statement was followed by legislation altering the name of the British state (to "United Kingdom of Great Britain and Northern Ireland") and by the Statute of Westminster, 1931, for the purpose of removing whatever legal restrictions had hitherto existed. But the Statute did not apply in its fullest provisions to Canada, which asked (due to internal federal reasons) that a special section be inserted to preserve the special constitutional peculiarity previously mentioned. This Canadian section can be removed whenever Canadians desire it. Other states could take note of this development if they wished, and the fact is that they had already acknowledged the new status even before it

was stated as a matter of "British" law. There is no doubt that Canada has been recognized as being a state to all intents and purposes and it is well understood that the United Kingdom is no longer the only state in the British Empire or British Commonwealth of Nations.

From this it may be concluded that the Canadian status of sovereignty or independence is more a matter of practice than of law. Indeed, it will be found in many other aspects of Canadian government that there is often a considerable divergence between the legal position and the actual practice. This is perhaps a natural and universal phenomenon—for law often lags behind usage—and it is particularly true of countries which have inherited British institutions. But this much can be said. Whether Canada is technically and legally a "state" is not significant so long as she acts and is recognized as acting as a fully independent self-governing country. Nor does connection with or inclusion in the British Empire or British Commonwealth of Nations make any more difference to her freedom than membership in any other League of Nations while this association is voluntary and the degree of co-operation depends on Canadian will. The other states of the world are quite indifferent to the technicalities; they are content with the actuality of Canadian independence.

### *Is There A Canadian Nation?*

More important to many people than the question of statehood is that of nationhood. A nation is said to be one of the firmest foundations on which a stable state can be built. Certainly the trend of the last century and a half has been for peoples who form nations to set themselves up as independent states. It is unnecessary to ask whether the creation of nation-states is the culmination of divine purpose for mankind, or is the natural biological expedient for community survival in the struggle for existence, or is simply the easiest grouping of men in which self-government can be practised. The temper of the modern day is to assume that nations should exist as states and

the topic just discussed—statehood—would usually be stated as a question, Should Canada be a state? To this the current answer is, Yes, if Canadians constitute a nation.

Despite the prodigious influence exerted by nationalism in the recent past, it must be admitted that there is little agreement as to what a nation is. Perhaps this is in the nature of the matter, for each nation considers itself a special case, endowed with a unique sentiment and value. Indeed, the one thing common to the innumerable and conflicting definitions is that a nation is a community which feels special sympathies and affinities peculiar to itself. Broadly speaking, one may say that a people is a nation if it feels that it is one. What makes a nation feel this way is variously attributed to the possession of a common language, homogeneity of race, unity in religion, devotion to a homeland, or long historical association. What this sentiment of group identity leads a people to do also varies. One such community may be content to preserve and perpetuate itself in the midst of other groups; another one, especially if feeling in danger of absorption or subject to great injustices at the hands of others, may aim at political separation in order to protect its identity; and still another people may utilise political institutions for the purpose of enforcing conformity upon reluctant individuals or minorities or to strengthen its relative strategic position in the world. In the past century the opinion has become widespread that unless a self-conscious people has some form of these political ambitions it is not truly a nation.

There need be no doubt that the people of Canada generally possess the feeling of separateness from the rest of the world. They are conscious of being distinct from, though in varying degree akin to, the peoples of the British Isles, France, and the United States. Yet it cannot be asserted that this separateness is the outgrowth of cultural or racial difference; it is the product of political separation. Canada is a term of political geography, and Canadian nationalism is likewise derived from political concepts. There is neither common language, religion, race nor the prospect of establishing these. Accordingly, it is perfectly

evident that the people of Canada can not be considered a nation in the same way that the Poles or Greeks are nations. In nations of the latter type, it is the cultural unity that leads to the ambition of statehood. It can never be said that Canada ought to be a state because Canadians are a distinctive and homogeneous people. There are, however, nations that instead of creating states have themselves been created by long-established states. If there is a Canadian nationality it must be of this latter kind, for in the absence of an original linguistic or racial unity the concept of a Canadian nation could not arise until after several elements were brought together in the Dominion with a government extending over them. Yet even if belonging to this type of nation—the politically-created type, such as the American or Australian—Canadians possess no expectation or desire to have politics or geography produce the very real social homogeneity which is now found in the United States or Australia. Nationalism for Canadians cannot mean or aspire to mean the use of the state to create complete social unification.

This leaves the possibility that political organisation and geography might be successful in establishing a partial unity—not racial, linguistic or religious—but a political sympathy and territorial loyalty. Whatever sentiment of corporate identity there can be in Canada must thus be founded on devotion to Canada as a homeland, pride in common history, the possession of just and distinctive political institutions—plus the general fear of losing freedom or being dominated by other states or peoples. Is this type of sentiment properly nationalism? To those observers who find in cultural unity the distinctive feature of nationalism, the answer is a categorical No, that Canadians are not and cannot be a nation. This view, it must be noticed, also denies the existence of a British nation in the British Isles, a Swiss nation in Switzerland, or a Belgian in Belgium. And certainly, if the feeling of community and unity is to be thoroughgoing so that there are no doubts and hesitations about group loyalty, this might seem well-founded. For the fact is that nationalism often proves as destructive a force in the state as it

is a cohesive one. The nationalising accomplishments of a century's political and economic organisation may be defeated by the temperamental rise of dissident cultural communities claiming a similar right to statehood. This has already occurred in the British Isles. If nationalism founded on cultural, racial, or religious sentiment is the cult of the day, the French of Canada have a far better claim to political independence—and also a better prospect of it—than the Irish in the British Isles. If the English of Canada took up the American process of assimilation, conflict would immediately occur. The very concept of Canadian political nationalism is thus constantly menaced by the common or standard view of nationalism as cultural uniformity.

The preliminary difficulty with Canadian nationalism, then, lies in the attempt to create a nation without being able to establish homogeneity. This problem has existed ever since the Anglo-French wars for the control of North America. After the conquest of Acadia there was the unfortunate—and unsuccessful—effort to root out the French from Nova Scotia. After the conquest of New France, however, the continued existence of the French with certain rights was guaranteed, not perhaps on theoretical grounds of tolerance but largely to counter-balance the possible revolt of the English colonies to the south and to hinder French colonial aid being given France if the latter should aid the revolting colonists. After the American revolution this British policy of protection for the French was continued as a counterpoise to Americanising tendencies in the remaining British North American colonies. A hundred years ago the British investigator of the Canadian rebellions of 1837 reported, in somewhat grandiose overstatement, that he found “two nations warring in the bosom of a single State; I found a struggle, not of principles but of races.” Thirty years later, when Durham's expectation of English assimilation had completely failed, the Dominion was established with the definite intention of perpetuating the difference between the peoples while at the same time creating a common political bond in a larger Canada. This, it should be noted, is a typically British

type of community—comparable to the British Isles, South Africa, India, and numerous other countries which have come under British guidance. It must not be confused with the homogeneous nationalism of Australia, New Zealand or the United States.

Can the term nation be applied otherwise than in the cultural sense? It has already been remarked that each nation thinks itself a special case and that great divergence exists in the definition of nationalism. The most considered view is that if a people think they are a nation, then the outsider must accept their verdict. It is a fact that for seventy-five years the peoples of Canada have lived as a separately self-governed country. Do they think of themselves as a distinct people? This is harder to answer. It varies with the individual, the local group, and with the occasion. It is periodically disturbed by the "British" sentiments of some of the English Canadians, by the "separatism" of some of the French Canadians, and by the cultural and economic "Americanisation" to which all Canada, but especially English Canada, is exposed. Clearly, the Canadian nation is not indestructible; it is not as deeply rooted in past association as the Swiss and British. Its continued existence has been largely experimental and its future depends chiefly on the capacity of the people to tolerate marked dissimilarities and yet cultivate mutual interests and loyalties. If this cannot be done in a democratic, New World environment, it cannot be done anywhere.

### *The Country and Its Inhabitants*

The word Canada is of Indian origin and was first popularly employed by Europeans to designate the French settlements on the St. Lawrence river. Its official English use commenced in 1791 when this region and the hinterland were divided into two provinces—Lower Canada (the earlier French area) and Upper Canada (the interior portion then undergoing English settlement). After 1867 the name was gradually extended to



all British North American territories which were successively brought into political connection with the original "Canada". As a result of the acquisition of Labrador (at the entry of Newfoundland in 1949) Canada now embraces about half the North American continent—all that portion north of the United States with the exception of Alaska at the extreme north-west corner of the continent. In addition to being a continental mass, the Dominion includes innumerable islands of considerable size or importance, such as Vancouver Island off the Pacific Coast, Cape Breton, Prince Edward Island and Newfoundland off the Atlantic coast, and all the islands in the Arctic Ocean west of Greenland. The total land area is estimated to be more than three and a half million square miles. There are numerous large inland waters; in addition to the Great Lakes along the southern boundary, there are several other large ones, such as Lakes Athabaska and Winnipeg in the interior.

Although Canada forms a relatively continuous block of the continent, it does not form a geographical unit for human habitation. This results from its position as the northernmost section of the continent. Most of this enormous country, which is almost the size of Europe, is uninhabited and apparently uninhabitable. In the western half, where the southern boundary is the 49th parallel of latitude, settlement rarely reaches beyond the 55th parallel (as it does at Peace River); in the eastern half, where the southern point touches the 42nd parallel (at Lake Erie), settlement becomes sparse above 50°. From the middle 50's therefore, to the most northern point (83°, Ellesmere Island) the Dominion is an unpeopled wilderness containing but the occasional white trader or missionary, Indian trapper, or nomadic Eskimo. The first consequence then, of the continental position is that, as a habitable country, Canada is a relatively narrow strip of territory some three hundred miles in depth, extending across the continent just above the American boundary. Even this is a formidable area of one million square miles for the occupation of less than fourteen million people, half of whom live in towns and cities. It obviously imposes an

enormous diffusion of national effort into overcoming the transportation problems.

An equally important consequence of the continental position is that this habitable portion of the country is divided vertically into the natural sections of the rest of the continent. There are five clearly marked regions; the Atlantic maritime; the interior St. Lawrence valley; the rocky, woodland centre; the prairies or western interior plains; and the mountainous Pacific coast. From a demographic standpoint, however, although these five regions stretch out successively across the continent, there is one fundamental division which overshadows all the others. The central region of rock, woods, and lakes, an almost unsettled wasteland extending for nearly a thousand miles along the northern shores of Lakes Superior and Huron, separates Canada into two distinct parts. The division is accentuated both by the low total population of the country and by the narrowness of the habitable belt which provides no means of encircling or bypassing this desert. It furthers the handicaps to transportation and communication by heightening costs and occupying time for transit. Furthermore, this geographic factor tends to create a marked division in national sentiment in proportion as it coincides with a clearcut difference in economic interest. To the east of this barrier lie 70% of the population, and it is there that industry, commerce, and finance are centred. To the west lie the other 30% of the population, almost exclusively devoted to agricultural and extractive enterprises.

In a country which is clearly not a geographical unit for habitation it is fortunate that the physical partition does not coincide with the racial or cultural division. There could be no Dominion of Canada if the East were French and the West English. But this is not the case. Canada is cut in two geographically, but the racial cleavage is not superimposed on this in such a way as to necessitate two political countries. In its population structure Canada is multi-racial. The census of 1941 revealed a total population of 11,506,655,<sup>1</sup> of which 49% was of British

<sup>1</sup>Estimated on Jan. 1, 1950 as 13,728,000

stock, 30% of French, and 21% of various origins (from 4% German to less than 1% Oriental). It has been estimated that if the present birth-rate and immigration tendencies continue, the French will predominate over the British before the end of the present century. There is also a clear, but not quite identical, religious cleavage: 43% of the people being Catholic (including practically all the French), and most of the remainder (55%) being Protestant—19% in the United Church (Methodist, Presbyterian and Congregational) and 15% Anglican. At the moment, then, Canada is predominantly a "British" Protestant country with a distinctive French Catholic element.

Two things, however, have to be noted in the demographic picture. In the first place, the French, although expanding rapidly, reside chiefly in the East (in the lower St. Lawrence valley), but are balanced in number and are shut in or surrounded there by the English who live in the maritime regions and in the inner portion of the central area. No effort is made to anglicise the French, who are accepted as entitled to their differentiation there, but who are increasingly (40% of them in 1941) becoming bilingual. On the other hand, the West displays a very different situation. There the French are few and are relatively insecure in their differentiation; the dominant group are British. But it is also in the West that the great body of non-British immigrants are found, mostly scattered and not in concentrated settlements. In this section of the country, "Canadianisation" of the non-British proceeds on the American process of assimilation, with the assimilation being anglicisation. One third of the people of non-British stock reported their mother-tongue as English in 1941. In the West, therefore, although the population may become less "British" in race, its cultural content will nevertheless be Anglo-Canadian and not Franco-Canadian. The "New Canadians", as these non-British groups have been called, thus correspond to the "hyphenated Americans" in the United States; but they are not special Canadian categories in the sense that French-Canadians and English-Canadians are. Linguistically and culturally, then, Canada is, and must remain,

a bilingual and bi-cultural country, though there is little official recognition of this except in some aspects of national and Quebec government.

. . . . .

In conclusion it may be said that Canada is really an American state in the sense of being a self-governing and independent country in the American hemisphere, though it retains some formal vestiges of former subordination to a European state (Great Britain). But the Canadian people do not constitute an American nation in the sense that there is a cultural unity centred on American soil; they are an American people in the sense of living on the continent and experiencing the special influences which have made American colonists different, say, from the Australian or New Zealanders. Canadians are conscious of being "Americans", but "American" somewhat in the Mexican or Costa Rican sense. "English-Canadian" life is not consciously modelled on the "English" pattern as Australian or New Zealand life is said to be; nor is "French-Canadian" social life conceived as identical with that of France. Economically and socially, as well as geographically, Canada is bound close to her neighbour to the south, though this is most pronounced for the English-speaking groups. To a visitor from another continent Canada may seem definitely American, while to an American she may display marked divergences.

But in the "folk" sense of a way of life, there is no Canadian nation apart from the political aspects. To this degree, then, Canadian nationalism is more characteristic of the British Empire or Commonwealth tradition than of America. The process of creating the new nation has not followed the typical form of assimilation or conformity to the dominant type in the community; so far as it has been politically directed, it has pursued the characteristic British policy of preserving the marked differences of the basic races. With the exception of the unhappy episode of the Acadians, the French—unlike the Dutch in New York, the French in Louisiana, the Spanish in New Mexico and

California—have not been forced into the predominant mould. Even the aboriginal Indians and Eskimos have been spared the harsher and more destructive treatment accorded non-Europeans in the rest of the Americas until fairly recent times. It is true that this tolerance of diversity has not been so readily extended to the more recent European immigrants, but this different policy is to be attributed to the confusion that would result from complete heterogeneity and to the immigrants' understanding that some degree of conformity to the new country is expected.

The continuance of Canada as an entity is thus dependent on maintaining satisfactory relations between English and French. "Canadianism" can have little ethnical meaning; it must be political. As a people, Canadians must rest unity on concepts of political justice, geographic community in self-government, economic opportunity, and cultural satisfaction for the component elements. In an era when nationalism is primarily cultural, this is a highly difficult experiment, though it has long been proceeding with marked success. It could, however, be destroyed overnight either by attempts at unification or by separatism. But in this respect, Canada faces the same difficulties that mankind experiences everywhere today in the effort to substitute intelligent and reasonable collaboration for sentimental isolationism and prejudicial domination.

#### FOR FURTHER READING:

On the general subject of statehood and nationalism consult the articles in the *Encyclopedia of Social Sciences* (14 vols., 1932-35). See also A. Brady, "Dominion Nationalism and the Commonwealth," *Canadian Journal of Economics and Political Science*, Vol. X (1944), pp. 1-17, and Chapter VII: "American and Dominion Nationalism" in *Nationalism* (1939), a report of the Royal Institute of International Affairs.

Canada's international position is dealt with at length in several works devoted to the structure of the British Commonwealth of Nations. Most authoritative is A. B. Keith, *The Dominions as Sovereign States* (1938), especially Chapters 2, 4, 16 and 17. See also W. Y. Elliott and H. D. Hall, *The British Commonwealth at War* (1943) and A. Brady, *Democracy in the Dominions* (1947). The factors influencing Canadian conduct are analysed in R. A. Mackay and C. B. Rogers, *Canada Looks Abroad* (1938) and F. R. Scott, *Canada Today, a Study of Canadian National Interests and National*

*Policy* (1938), both prepared for the Canadian Institute of International Affairs, whose new quarterly, *International Journal*, provides Canadian comment on current policy.

The large aspects of Canada's political, social and economic life are fully treated in G. Brown, ed., *Canada* (1950). A recent summary of "Features of Present-Day Canada," edited by R. H. Coats appears as the September 1947 issue of *The Annals of the American Academy of Political and Social Science*. The peculiar features of Canadian nationalism and the international problems to which they give rise have been the subject of much discussion from Goldwin Smith's *Canada and the Canadian Question* (1891) to John MacCormac's *Canada, America's Problem* (1941). One of the most readable expositions of Canadian sentiment is J. W. Dafoe, *Canada, An American Nation* (1935). See also C. Martin (ed.), *Canada in Peace and War* (1941) Ch. 1. Of wide interest as well as of special importance on the racial issue is A. Siegfried's, *Canada* (2nd. ed., 1937). Sympathetic Anglo-Canadian volumes are W. H. Moore, *The Clash!* (1918) and W. Bovey, *The French Canadians Today* (1938). Among recent Franco-Canadian writings may be mentioned J. J. Tremblay, *Patriotisme et Nationalisme* (1940), E. Turcotte, *Réflexions sur l'avenir des canadiens français* (1941), and M. Ollivier, *Le Canada, Pays Souverain* (1935). A friendly American study is M. Wade, *The French-Canadian Outlook* (1946).

Factual material about the Canadian population may be secured from W. B. Hurd, "Racial Origins and Nativity of the Canadian People," *Census Monograph* No. 4 (1937). See also C. A. Dawson, *Group Settlement: Ethnic Communities in Western Canada* (1936).

## CHAPTER II

### FROM COLONY TO DOMINION

#### *Constitutional Beginnings*

Since the first Europeans reached Canadian soil four great and decisive events have shaped the constitutional system of the country—the English conquest in 1759-60, the Durham Report of 1839-40, the Confederation of 1867, and the Balfour Report of 1926. None of these were entirely unexpected or unanticipated; each sprang from a local background and yet each had a wider significance and setting in British imperial development. The first concluded a lengthy period of Anglo-French rivalry in North America. The second marked the commencement of a novel departure in colonial constitutional policy. The third represented a new scheme of colonial regional grouping to permit the development of overseas “nations” within the empire. The fourth marked the culmination of this new national growth and the admission of new Britannic nations to equal partnership in the former empire, henceforth to be known as the British Commonwealth of Nations. These events divide Canadian constitutional history into five periods, from each of which something permanent has been left in the Canadian system of government.

The first period—from Cartier’s exploration in 1534 to the conquest in 1760—was one of imperial rivalry, which sporadically broke into open warfare. French occupation of Acadia was a counterpoise to English use of Newfoundland as a base for the Atlantic fisheries; both colonies were at the entrance to the St. Lawrence river, along which the chief French colonisation took place. The great French ambition of the early eighteenth century was to connect this northern “New France” with southern settlements along the Mississippi and thus shut in the English colonists to the Atlantic seaboard. How and why

they failed to effect this purpose is not pertinent here; it is enough to state that the conquest did bring French claims to an end. Little need be said of the French system of colonial government except to note that in its later stages it was royal rule, with hardly any organs of self-government. The French settlers had carried with them their customary law (*Coutume de Paris*), a feudal land system, and the Catholic religion. The hierarchical principle was not only applied in the royal government and ecclesiastical establishment, it also prevailed in the seigniorial economy. No effective representative institutions existed for consultation of the colonists. After the conquest, the ruling officials withdrew from the country under the terms of the treaty of peace. At the capitulations of Quebec (1759) and Montreal (1760) temporary promises had been made for the continuance of the property rights and "customary privileges" of the inhabitants. The surrendering officers at Quebec had also asked that their people should be obliged by the English government to pay their tithes to the priests and that they should continue to be governed according to the "custom of Paris". No definite guarantees on these matters could be given; but the fact is that the French have kept their language, religion, and law.

English claims to Canadian territory had early been asserted in two widely separated areas, one being the strategic peninsula known to the French as Acadia and to the English as Nova Scotia, the other being the Hudson Bay region. Both of these changed hands time after time in the course of hostilities and treaty-making. In 1697 the treaty of Ryswick confirmed the French title to both these areas; in 1713 the treaty of Utrecht transferred them to England. In 1748 the treaty of Aix-la-Chapelle restored to France the islands in the Gulf of St. Lawrence—Cape Breton, St. John (Prince Edward Island), St. Pierre and Miquelon—but left Acadia and Hudson Bay with England. The English occupation of Nova Scotia had been firmly established by settlement after the dispersal of the local French colonists in 1755. Indeed, so far had civilian settlement proceeded that a colonial assembly was summoned in 1758 and the "fourteenth" English colony in America took its place among



the other royal provinces which had a governor and council, English law, and representation. In the Hudson Bay region, on the other hand, a different situation held. No attempt at colonisation was made. The territory had been granted to a company of Merchant Adventurers in 1670, and it remained under proprietary rule of the Hudson's Bay Company for the next two hundred years. The sole purpose of the proprietors was the exploitation of the fur trade with the native Eskimos and Indians.

The second period—from the conquest in 1760 to the Durham report of 1839—was one of further territorial extension in the west, of English settlement in the east, and of the advancement of all portions (save the Hudson Bay regions) to the level of colonies with representative institutions. Until the commencement of this period, the Pacific coast had been completely ignored by both English and French. It was not until Captain Cook visited the northern part of the west coast in 1778 that exploration and occupation of what is now British Columbia began. Some years after this, the barrier formed by the Rocky Mountains was crossed from the east, and in 1821 the Pacific area also fell under the control of the Hudson's Bay Company. In the eastern half of the continent, however, far more momentous developments took place, the general result of which was the setting up of three additional English colonies on both sides of the French. The latter now came into the general picture of British North American colonies on the same constitutional footing as the original thirteen colonies.

The introduction of some sixty to seventy thousand French settlers into the British colonial system may be said to have destroyed the old "English" empire, though at the same time it provided the foundation for the second or new "British" empire. No other colony had contained so many non-English Europeans and it is no wonder that at the peace negotiations of 1763 the British government weighed carefully retention of Guadeloupe instead of New France. For the first few years there was some confusion over the status of Catholicism, French law, and the feudal land system. At first the local military and civil

governors actually departed from their instructions in order to prevent the chaos which would have resulted from wholesale introduction of English law. But in so doing, they also refused to summon a representative assembly—a typically English colonial institution for which the French were completely unprepared. It was to clarify the legal position that a “reactionary” British Administration pushed through Parliament a new constitution for the colony (now named Quebec). The Quebec Act of 1774 was apparently intended as a precaution against the western expansion of the old Atlantic colonies (for which it was duly condemned by Chatham), but it also perpetuated French civil law in the new colony and protected ecclesiastical rights (for which it was duly praised by Burke, Chatham’s associate in the opposition to the British government of the day). Thus what was offensive to English colonial susceptibilities proved a new principle for future non-English subjects who might be brought within the empire, namely, the preservation of their former laws and customs. It may also be noted that the founding of a colonial constitution on a British statute was a departure from the past practice. It was to become a regular feature of the nineteenth century; but this necessity arose from the standard legal rule that the Crown could not withdraw representative institutions once granted or promised. At any rate, the French were to keep their law and Church, but were not to have representation. The Treaty of Paris, 1763, had said nothing of French law and language, but had specified that His Majesty’s new Roman Catholic subjects might continue their religion “as far as the law of Great Britain permits”. What that meant no one knew for certain, for Catholicism was proscribed in England. But if the French were to be protected against English religious laws, were they nevertheless to have the English system of representation and trial by jury?

The conquest of New France brought under British rule a colony in which the usual “rights of Englishmen” were not fully applied. A new factor was soon introduced, one which was to precipitate the question of divergent treatment of colonies. The American Revolution broke out within a year of the passage

of the Quebec Act and thereupon a great wave of immigrants, American loyalists from the revolting colonies, poured into the northern settlements. The number of *émigrés* who thronged into Nova Scotia and Quebec equalled or threatened to equal the number of French already settled along the St. Lawrence. These Loyalists, even though they settled in territory formerly French, could not therefore be denied the "rights of Englishmen", including English law, trial by jury, and representation. St. John (renamed Prince Edward Island in 1798) had already been set apart from Nova Scotia in 1769. As a result of the influx of new immigrants, New Brunswick was erected into a separate colony from Nova Scotia in 1784. Seven years later, the western part of Quebec was set off from the French portion in order again to found a new "English" colony. The division of Quebec was accomplished under a British statute, the Constitutional Act of 1791, as a result of which the western portion—designated as Upper Canada—was endowed with English law and a representative assembly. The eastern portion, Lower Canada, was expected to remain French, and, while English criminal law (with trial by jury) was to continue as before, French civil law and the previously existing social system, with its tithe-collecting Catholic Church, were perpetuated. Most significant of all, however, is the fact that Lower Canada was to have that palladium of English colonial liberty, a representative assembly. The experiment was to be tried of accommodating a non-English people to the typical free institutions which had been the ancient right of English colonists in America. The future, not only of Canada but of the whole empire, rested on the possibility of operating English political institutions within the social, religious, and legal fabric of a non-English society.

By the commencement of the 19th century, therefore, all the remaining British colonies from Nova Scotia to the upper St. Lawrence river had been placed in the same general position of representative government as the original thirteen American settlements, even though one of them possessed neither the English law, Protestantism, nor spirit of local self-government from which the system sprang. All became "royal" colonies in the sense of

being under the standard rule of a governor from England, with an appointed council, and an assembly elected on a fairly wide property basis. The two Canadas held these institutions by statute; the others (New Brunswick, Nova Scotia, and Prince Edward Island) by traditional grant from the King. Unfortunately for the experiment, however, the trial was entered upon at the very time this old colonial system had proved profoundly defective in the oldest regions. The original thirteen colonies had been provoked into successful rebellion and had been lost to the empire. The same or similar defects appeared shortly in the five remaining British North American colonies of this type; and, before fifty years had elapsed, insurrections broke out in both Canadian provinces and a rising tide of discontent appeared in the others.

Of the numerous difficulties in the colonial system, one alone needs to be mentioned here as of primary importance—the separation of powers between an appointed executive and an elected legislature. The last ten years of this period were filled with successive conflicts between the governors with their small circles of advisers on the one hand and the representative assemblies on the other. In Upper Canada this was largely a contest between Americanised, non-conformist, frontier farmers and the High Church, exclusive, and ultra-loyal officialdom; in Lower Canada, it was a struggle between the small Protestant, commercial, and dominant English official group and the conservative, French Catholic majority. In Nova Scotia and the other maritime colonies, the situation was similar to that of Upper Canada—a product of social and economic cleavage between the administration supported by old and well-established families and the assembly increasingly representative of the newer immigrants.

### *Responsible Government*

The third period, from Lord Durham's Report of 1839 to Confederation in 1867, is characterised by the introduction of "responsible government." Officially, this new development followed in hesitating fashion the lines laid down in the Durham

Report. Lord Durham had been sent out as governor-general and high commissioner to investigate the causes of the insurrections and discontents. His report was a keen analysis of the situation with a most statesmanlike programme for its remedy, the major principle of which was to be carried round the world within the British system. Durham urged the application to the colonies of the same constitutional principles which then distinguished, and still do, the British government at home. The essential feature of the colonial disputes had centred about the cleavage between the representative assembly and the irresponsible executive. In the American colonies which had sought independence, the solution for this ancient problem of the old colonial system had been found in the election of the governor and other officials by the same voters who selected the assembly. Lord Durham, drawing on English experience with this executive-legislative clash, adopted a Canadian proposal (made by Robert Baldwin) to solve it by the introduction of the English remedy—the selection of the real executive (the governor's advisory council) from the legislative majority. Ministerial responsibility to the legislature had been the process by which king and parliament had been brought into harmony in England and it seemed that a similar result would obtain in the colonies. Responsible government, therefore, was to be nothing more nor less than an adaptation of cabinet government to the colonies with such restrictions and modifications as were called for by the limitations on colonial autonomy. Cabinet government, it must be remembered, had been of very slow evolution in England and it has often proved a difficult scheme to introduce abroad. In the colonies, in particular, many governors were most reluctant to become figure-heads, and there was considerable difficulty at first in securing responsible colonial politicians adequately supported by legislative majorities. After many set-backs the practice of responsible government was definitely effected in 1846-7 by instructions from the home government—not by statute—and was brought into operation in all the eastern colonies.

Responsible government was a new device in colonial government. Institutionally, it is the great invention which distinguishes

the "second" British Empire (of the nineteenth century) from the "first" empire lost in the eighteenth century. But it must not be thought that its beneficial results were due entirely to the merits of this special arrangement for the dependence of the governor's executive council on the legislature. Complete colonial self-government could be attained only if other forms of imperial control were relaxed. It is significant, therefore, that these years coincided with a period of negative imperialism, a repudiation of the old colonial system. There were several aspects of government in which Durham and his colleagues never anticipated that local colonial control would apply, yet without which it is doubtful if the new venture would have met with any success. The fact is, however, that a fundamental change was taking place in British policy, a change that was perhaps more influential than anything else in making possible the extension of full self-government. The chief feature of this revolution was the abandonment of the older view of a self-sufficient or "closed" mercantilist empire directed, in economic matters, from London. It should be recalled that the Renunciation Act of 1778, which had disavowed British internal taxation of American colonists still implied that the British government retained oversight of the intercolonial and external trade of the empire. But in the 1840's the growth of *laissez-faire* sentiments fortunately accompanied the introduction of self-government. In 1846 the English corn laws were repealed; in 1849 the last of the navigation acts was discarded. This adoption of free trade had the effect of relinquishing to the colonial legislatures full capacity to control and manage their entire financial and trade policies. That the colonies took up "protection" just as Britain was giving it up is both true and curious. But it must be noted that the liberty to do so was inherent in the principle of colonial responsible government. Without British free trade and *laissez-faire* there could never have been full attainment of the principle of responsible government. Relaxation of British economic control was a prerequisite for colonial ministers to win the upper hand over the governor sent out from Westminster. That this British renunciation of authority carried with it the possibility that the

colonies would introduce protective tariffs and so disrupt the existing empire economy is also true; it was the economic hazard of political liberty.

There is one other aspect of the Durham policy which must be mentioned, for it is the phase in which failure is most apparent. He had noted that the conflict in Lower Canada was a racial one, of French *versus* English. The remedy, he thought, lay in the gradual assimilation of the French by the English, a process which he conceived had hitherto been postponed or prolonged by the political separation of the two races. Accordingly, Durham recommended that the two Canadas should be re-united with the expectation that the amalgamation of the two peoples would shortly take place. This recommendation was actually the one which was given immediate application. The two provinces were united in 1841 under the Act of Union, 1840. But Durham has proved to be completely mistaken in thinking that the French would be anglicised.

Meanwhile, in the far west, the Hudson's Bay Company continued to exercise its mercantile and political jurisdiction in Rupert's Land and the northwest. A relatively unsuccessful attempt at colonisation had been undertaken in 1812 by Lord Selkirk along the Red and Assiniboine Rivers in what is now Manitoba. But, with this exception, the prairies remained almost unoccupied by settled Europeans. On the Pacific coast, on the other hand, a more rapid development was taking place. Vancouver Island had been withdrawn from the Hudson's Bay Company in 1849 and constituted a crown colony. Some ten years later (1858), as a result of the gold rush, the mainland was also set up as a separate colony, known first as New Caledonia and later as British Columbia. Popular representation was extended to the first of these settlements in 1856 and to the second in 1863. In 1866, the two colonies were united as British Columbia, with the prospect of securing responsible government very shortly.

*Confederation of the British North American Colonies*

The formation of the Dominion of Canada in 1867 is the third great decisive event in Canada's constitutional development; and the fourth period (1867-1926), which it ushered in, saw the expansion of the eastern colonies into the great Dominion of today, with a consequent increase of political self-consciousness and independence. The suggestion of some such union had frequently been made earlier in the century; but it was not until the late 1850's that the subject became one of practical politics. By the time the scheme of union was drafted in 1864, there were eight different governments in what was often termed British North America: two on the pacific coast (Vancouver Island and British Columbia); the Hudson's Bay Company in the central west; United Canada; New Brunswick and Nova Scotia on the eastern maritime mainland; Prince Edward Island and the Island of Newfoundland off the eastern coast. Some degree of political unity had been maintained by the general supervision of the Colonial office and by the application of the usual rules of colonial subordination; but, as these controls were relaxed with the enlargement of responsible government, the political, economic, and social divergence between the several colonies was increasing rapidly.

The movement to greater unity among the British colonies owed very little to imperial pressure, for the dominant forces were primarily of local importance. Yet, from the imperial standpoint, the creation of a union of British colonies to offset the American union of revolted colonies had long been perceived as imperative if the British colonies were to resist Americanisation or annexation. This conclusion could have been drawn from the invasion of Canada during the war of 1812, and was self-evident in later periods when "manifest destiny" became a marked factor in American policy. On the military side, colonial unification was as much needed as it had been a hundred years before (in the days of the Albany Congress), particularly since defence had become a colonial obligation under responsible government. Furthermore, in the west there was the problem of the unde-



terminated boundary across the great plains to the Pacific coast, with an "empire at stake". For a long time, however, numerous obstacles hindered recognition of these factors. Local colonial jealousies offered little promise of unity, and there was too, perhaps, some degree of fear on the part of the British government at the prospect of being faced by an organised "colonial front". Moreover, the revolution in imperial policy tended to undermine whatever British interest there had been in colonial union. The victory of *laissez-faire*, coupled with anti-imperialist lethargy of officialdom and statesmen, tended to foster the opinion that the connection of all American colonies with Britain was destined to be shortlived. It was really not until the outbreak of the American civil war compelled apprehension for the future safety of the colonies that imperial sentiments favouring unification could give aid or direction to the movement.

Meanwhile, in the colonies themselves, the influence of Americanising tendencies was increasingly felt, both in sentiments, economic dependence, and the prospect of annexation. In addition to the difficulties of defence the colonials were faced by serious economic problems. They had lost their favoured position in British markets when Britain adopted free trade. Interest and necessity forced the Canadians into a reciprocity treaty with the United States in 1854 and the threatened American denunciation of this arrangement—which became a reality in 1865—struck a hard blow at the eastern colonies which were in close commercial and trade relations with the Americans. Nova Scotia, too, was tightly bound to the New England trade. On the Pacific coast, the dependence of the British colonists on San Francisco's shipping for connection with the rest of the world put them in a highly vulnerable position. Colonial union seemed to offer some degree of greater self-dependence or at least of greater bargaining power. Nor must it be forgotten that Toronto and Montreal looked as eagerly on the prospect of gaining access to the northwest (then under the Hudson's Bay Company's monopoly) as New York and Philadelphia had done with regard to the Ohio valley a century before.

The actual occasion of a movement for closer union of the

eastern colonies, however, was the failure of their constitutional system. The parent of Confederation, as Goldwin Smith has remarked, was deadlock. Responsible government was not working well in the United Canadas. From 1858 a condition of more or less permanent deadlock existed in the administration and legislature due to the continuance of the racial division and its political manifestations. For almost ten years there was a rapid succession of ministries and repeated elections failed to provide any cabinet with a working majority. Political necessity imposed a hyphenated premiership, double legislative majorities (one for each half of the colony); legislation had to be framed separately for each system of law, and even elections were fought upon different issues in the two divisions. It seemed that within a unitary constitutional system an unsuccessful attempt was being made to practice political federalism—unsuccessful because neither English nor French would make any concessions to the other, federal because each half was more or less governed by the representatives from that area. The situation was aggravated by the growing English majority for which no increased representation was accorded. Observers concluded that if peace and order were to be preserved, Canada must either be redivided into separate provinces or re-united in a larger federal scheme. The discussion of federalism naturally turned into one of union for all the neighbouring colonies. Such, indeed, had been the suggestion of Alexander Galt in 1858, though his project was received with but tardy approbation by imperial and colonial governments. At last, in 1864, a most serious deadlock was broken only by the coalition of the opposition "Grits" led by George Brown with the Conservative government of the day, led by John A. Macdonald and Cartier. The avowed purpose of the coalition was to seek a federation of all the British North American colonies.

At the very moment that the Canadian coalition came into office pledged to seek union, the legislatures of the three maritime colonies had endorsed a proposal for an eastern or maritime union. Resolutions in Nova Scotia, New Brunswick, and Prince Edward Island had authorised the meeting of delegates at a

conference at Charlottetown (P.E.I.) to consider the possibility of their union. The leader of this movement was Dr. Charles Tupper, of Nova Scotia. Thereupon, the Canadian government, without waiting for an invitation, also sent delegates to Charlottetown to propose that all the colonies should participate in a further conference at Quebec. The Quebec Conference (October 10-28, 1864) was accordingly held and was attended by twelve representatives from Canada, seven each from New Brunswick and Prince Edward Island, five from Nova Scotia, and two from Newfoundland. The results of their deliberations were embodied in seventy-two resolutions outlining a plan of federation for all the colonies.

These Quebec Resolutions did actually form the basis for the confederation, but this was not because of their acceptance by the several colonies. The scheme was definitely rejected by Newfoundland and New Brunswick at general elections and by Prince Edward Island in the legislature. Anti-confederation sentiment was so strong in Nova Scotia that the ministry did not even present the scheme to the legislature. It was only in the united province of Canada that the resolutions achieved formal legislative (though not electoral) approval. In 1866, however, the governments of Nova Scotia and New Brunswick were authorized by their legislatures to send delegates to London to arrange a more agreeable scheme of union with the imperial authorities. These delegates were then joined in London by Canadian representatives who conferred with them at the Westminster Palace Hotel and with the Colonial Secretary. Despite the formal rejection of the Quebec Resolutions, the proposals of that earlier conference were reconsidered and reformulated with but slight modification in sixty-nine new resolutions. Then, with the approval of the Colonial Secretary and with the aid of British legal draughtsmen (especially Lord Thring), this revision of the Quebec plan was prepared as a Bill and was finally passed by the British Parliament early in March 1867—without having been referred back to the colonies. On July 1, 1867, the Dominion of Canada was brought into existence by the union of “Canada”, Nova Scotia and New Brunswick under

royal proclamation. It will thus be observed that the Canadian constitution was neither fully prepared in the colonies nor drawn up by delegates equally instructed to perform the task. Its terms were not submitted in principle or in detail to legislative or popular endorsement. The constitution came into effect by authority of British enactment. At that time, Canadian leaders were quite definite in repudiating the "democratising" phases of American constitution-making.

### *The Enlargement of Autonomy*

The British North America Act of 1867<sup>1</sup> did not create a "state"; it simply created a new and larger colony. The name, Dominion, had little more significance for Canada than it had had earlier when applied to Virginia, the old "Dominion". It had been Sir John Macdonald's hope to name the new country "Kingdom of Canada", but this was apparently rejected at the London meetings as likely to offend American susceptibilities. Confederation, then, did not create a special status for Canada constitutionally, nor did it complete the country geographically or nationally. It took at least fifty years to bring this development to the point where Canada had definitely passed out of the colonial stage.

The formation of the Dominion of Canada was achieved by the union of three colonies—Canada, Nova Scotia and New Brunswick; but, from the moment of union, the Dominion was organised as four provinces, for the old United Canada was redivided along its former lines into Quebec (Lower Canada) and Ontario (Upper Canada). Provisions was also made for the admission of other colonies by royal order upon application of the appropriate colonial authorities. The first accession came from the west. Negotiations for the purchase of the territories of the Hudson's Bay Company had accompanied the Confederation movement. It was found that the royal charter of 1670 made necessary the passage of British statutes to authorise the transfer and to guarantee the money for the purchase. Accordingly, in 1868, the Rupert's Land Act (and a Loan Act) gave

<sup>1</sup>Appendix, p. 293.

the sanction required for the new acquisition. The most eastern portion of this area was immediately erected into the Province of Manitoba (1870) and territorial government was established for the remaining northwest territories. Meanwhile British Columbia on the Pacific coast was admitted to the Dominion by British order in council in 1871 after the presentation of Addresses to the Crown from the colonial and Dominion legislatures. In 1873 Prince Edward Island also entered the Dominion in a similar fashion. The next addition to Canadian territory occurred in 1880 with the transference by the British government of its jurisdiction over the Arctic islands not otherwise coming within the original northern territories. In 1905 two new provinces—Saskatchewan and Alberta—were carved out of the northwest territories by Dominion statutes. Boundary problems continued to give rise to difficulties with the United States and Newfoundland. So far as the United States is concerned the Alaska frontier was arbitrated in 1903 and possible disputes over the southern boundary waters were placed under an international joint commission in 1909. The Labrador dispute with Newfoundland was ultimately determined by the arbitration of the Judicial Committee of the Privy Council in 1927, but since the entrance of Newfoundland into the Canadian Confederation in accordance with terms mutually agreed on—and also approved by Great Britain<sup>1</sup>—this issue has been reduced to the status of a domestic matter of inter-provincial boundaries though the Canada-Newfoundland union has necessarily introduced new international problems with respect to the United States as a result of old American fishing rights previously arbitrated in 1910) and naval and air bases acquired during the second world war.

Of even greater importance than the geographical expansion during this period was the extension of self-government to the point of practical independence. The Act of 1867 had not really increased Canadian powers. All the old limitations on autonomy which had been characteristic of the colonial system under responsible government continued in force. The British

<sup>1</sup>See Chapter IX.

North America Act of 1867 made no declaration of intention to supersede or annul all previous British legislation for Canada as a colony. Not only, therefore, was the Dominion restrained by former laws and rules of colonialism, but it was bound by later legislation specifically applying to Canada and to the colonies generally. The limitations on autonomy which existed after 1867 fall into two general though related categories—those pertaining to internal matters and those pertaining to external relations. The first embraces those purely domestic aspects of Canadian government in which the British authorities still exercised some degree of control and the latter includes those restrictions which sprang from the Dominion's status as a colonial dependency in the field of international affairs. It was in the former (internal autonomy) that the first great changes were effected during this period (1867-1926).

Imperial control of Canadian domestic affairs was secured by the British Parliament's power of amending the constitution, the royal veto on Dominion legislation, Privy Council review of legal disputes, and British appointment and instruction of the Governor-General. Before the end of this period all but one of these had been reduced to a mere formality. No amendment of the constitution was ever attempted without Canadian request, although it was some years before agreement was completely attained on the method by which request should be expressed. The veto of legislation fell early into disuse; only one Canadian Act (one of 1873) was ever disallowed, and the possibility of royal assent being refused to Canadian bills was largely eliminated in 1878 by a change of the Governor-General's instructions. In the appointment of the Governor-General, it became the practice, after 1883, for the British authorities to consult the Canadian Prime Minister as to the acceptability of a prospective nominee. By 1921 this procedure had gained such complete recognition in Great Britain that, when the Irish Free State was founded with a constitutional position similar to Canada's, it was specifically defined by the Prime Minister (Mr. Lloyd George). The one phase of British intervention in domestic matters which persisted throughout the whole period was that

of the review of judicial decisions. No final court of appeal for Canada had been established by the Act of 1867, though authority was given to create such a court. When at last the Supreme Court was established under a Dominion statute of 1875, British pressure secured the insertion of a clause preserving appeals to the Crown-in-Council. The effect of this provision has been to perpetuate the use of the Judicial Committee of the Privy Council as the final court, not only in cases of private litigation but also in controversies involving constitutional interpretation.

In this period, particularly during the latter part of it, considerable strides were taken in the assertion of the Canadian viewpoint on external affairs. After 1867 the British Parliament legislated for Canada as for any other colony on such subjects as shipping, copyright, citizenship, etc. By 1900, however, it had become the practice to except Canada and the other self-governing colonies from the operation of new legislation of this type unless it met with colonial approval or adoption. In the realm of military and naval affairs, there was a similar withdrawal of imperial control, although British paramountcy was still acknowledged. Imperial forces were withdrawn from the country during the Boer War, and, after 1904, the command of the militia was definitely placed under Canadian ministerial control. By 1910 the naval bases at Halifax and Esquimalt were transferred to Canadian authorities (though with provision for British use in war) and the establishment of a Canadian navy was envisaged. At the outbreak of the world war of 1914-18, Canadian naval and military forces served as subordinate units of the British services; but, by 1918, the Canadian army had gained independent status and a separate distinct air force was in process of being established.

The greatest changes occurred in the field of diplomacy. As a dependency, Canada at first had no capacity to enter into relations with other countries, and the most that could be attempted was to influence British policy or negotiations by means of representations and suggestions. The earliest advance was the appointment of one or more Canadian ministers as British

plenipotentiaries for imperial negotiations affecting Canadian interests. This was won first in 1871 for the preparation of the Treaty of Washington. By 1893 it was fully acknowledged that commercial treaties were to be negotiated exclusively by Canadians. Political treaties remained a subject for British official determination and remained so until the dramatic entrance of Canada and the other Dominions into the arena of world affairs at the conclusion of the first world war. A Canadian minister signed the Treaty of Versailles (1919) specifically for Canada, and Canada became an original member of the League of Nations, the International Labour Organisation, and the World Court. In 1923, for the first time, a treaty with a foreign power—the Halibut Fishery Treaty with the United States—was negotiated and signed by the Canadian minister on behalf of the sovereign with respect to Canada alone.

In conclusion, it should be noted that this development of Canadian autonomy was accompanied by the rise of new concepts of the relationship which ought to exist between the Dominion and Great Britain. In 1880, a permanent representative of the Canadian government was established in London with the title of High Commissioner. In 1887, on the occasion of Queen Victoria's silver jubilee, the visiting colonial premiers were called into conference by the Colonial Secretary. Canada was host to a comparable conference, though devoted more specifically to economic matters, in 1894. Further conferences were held at Westminster in 1897, 1902 and 1907. At the last of these the name of the gatherings was changed from Colonial Conference to Imperial Conference, and at the ensuing meeting of 1911 the presidency passed from the Colonial Secretary to the British Prime Minister, as *primus inter pares*. After the outbreak of hostilities in 1914, a series of special war conferences were held in 1917 and 1918 and the Canadian Prime Minister was admitted to the Imperial War Cabinet. By the close of this period, "colonialism" as a practice was practically ended. The concept of dependency was being superseded by a new one of



partnership, and the position of Canada as a subordinate part of the British Empire was visibly changing into one of equality in the British Commonwealth of Nations.

*Dominion Status and Its Consequences*

The last stage of constitutional evolution was introduced by the Balfour Report of 1926. This document was no more a completely novel project than the Durham Report of 1839 or the other distinctive occurrences of 1760 and 1867 which have been designated as marking new stages in Canadian development. It gains its significance from the fact that it gathers together the results of fifty years' practice and relates the isolated precedents into a definite theory of Dominion status and nationhood. Since 1926 constitutional law and usage have been based upon the principles enunciated in the Balfour Report, and, where law or usage have been found to be out of harmony with the newly stated system, the required changes have soon been made to bring them into harmony with the essentials of "Dominion Status".

The origin of the Report is to be found in the admitted need for a general revision of the position of the "self-governing" Dominions—Canada, Australia, New Zealand, South Africa, Newfoundland, and the Irish Free State—whose importance was quite out of line with their technically subordinate or colonial standing. In 1917, at the first Imperial War Conference, it had been resolved that a conference after the war should devote itself to reviewing the constitution of the empire. No such action was taken until 1926. In that year, however, an Imperial Conference set up a committee (presided over by Lord Balfour and comprising the Prime Ministers of the Dominions and the Irish Free State) to report on inter-imperial relations. The Balfour Report was the product of its labours and was approved by the Conference. It specified the position of Great Britain and the Dominions as one of equal membership in the British Commonwealth of Nations, the members of which were declared to be bound together by common allegiance to one Sovereign. This equality implied that the ministers of one

portion—e.g., the United Kingdom—could not advise the Crown on matters pertaining to a Dominion except so far as the Dominion desired it. Thenceforth, the King would be advised solely by Canadian ministers on all Canadian subjects such as the appointment of the Governor-General, internal administration, Canadian treaties and external relations. The exercise of the veto on legislation was therefore regarded as completely outmoded in theory as well as practice. British legislation for the Dominions (without their consent) was likewise considered to be outgrown and the continuance of judicial appeals to the Privy Council was specifically said to rest on the will of the individual Dominions.

The Balfour Report had laid down the principles of Dominion status in so far as they related to Britain and British institutions. But, as an informal assemblage of political leaders, the Imperial Conference could make no change of law. Where the law was in conflict with the newly enunciated principles of Dominion Status, legal changes had to be sought by the usual legislative procedure. The first change was an alteration of the title of the monarch, which in 1927 was changed from "King of the United Kingdom of Great Britain and Ireland" to "King of Great Britain, Ireland, and the Dominions beyond the Seas." The rules for the negotiation and signature of Dominion treaties (as first adopted in 1923) were reaffirmed, and "Canadian" treaties thereafter became a regular feature of Canadian policy. The appointment of Canadian Ministers to foreign states (agreed to in 1920) also followed very shortly. The Canadian Prime Minister might deal directly with the British Prime Minister or (as Minister of External Affairs) could conduct his business with British officials through the new British Secretary of State for the Dominions. In 1931 a new commission and new instructions for the Governor-General were issued under Canadian auspices.<sup>1</sup>

Consideration of most of the legal handicaps surviving from colonial days was left to a later conference summoned in 1929. This body reported that the Dominions should be excepted

<sup>1</sup>Appendix, p. 354.

from the limitations imposed in the Colonial Laws Validity Act of 1865 and from the requirements of two other noted examples of British legislation for the colonies, the Merchant Shipping Act of 1894 and the Colonial Courts of Admiralty Act of 1890. It proposed also that a declaration should be made that Dominion Parliaments have legislative jurisdiction beyond their territorial limits (as every other sovereign state has), that they might repeal any British law extending to them, and that no British legislation thereafter should be made for a Dominion unless it was passed at the request and with the consent of the Dominion. The proposals of this special conference were accepted by the Imperial Conference of 1930, but before the action of the British Parliament was invoked to give them legal effect some of the Dominions expressed doubts as to the desirability of unqualified enactment of these provisions. In Canada, for instance, it was suggested that to give the Dominion Parliament powers equal to those of the British Parliament would be to violate the federal nature of the constitutional system. Other Dominions had other or similar objections. Accordingly, as a result of a Dominion-Provincial Conference in Canada, when the legal changes were at last embodied in the famed Statute of Westminster, 1931, a special "Canadian section" was inserted<sup>1</sup>. All the previously named benefits were to accrue to Canada with these exceptions: the amendment of the British North America Acts by the Dominion Parliament was not to be permitted nor was the Dominion Parliament to be enabled to legislate on matters previously beyond its federal jurisdiction. A slight modification of this has recently been made (1949),<sup>2</sup> but it is still true that failure to agree on a complete amending system perpetuates resort to the British Parliament.

Following the passage of the Statute of Westminster, a number of changes have been possible in Canada. New Canadian shipping legislation has been passed. In 1939, in preparation for the visit of King George VI, a Seals Act was passed to permit the use of "Canadian" seals by the King without

<sup>1</sup>Appendix, p. 336.

<sup>2</sup>Appendix, p. 334.

British ministerial intervention.<sup>1</sup> The long-discussed abolition of Privy Council appeals was deferred until 1949. Most significant however, was the procedure followed at the outbreak of war for this occasion provided an opportunity to make a distinctive display of separate Canadian action. Parliamentary endorsement of the government's war policy was secured before transmitting the proclamation of a state of war with Germany to the King for signature—seven days after Britain had been put at war.<sup>2</sup> Canada had taken no part in the Munich agreements, nor was she bound by the Anglo-Polish treaty, under which Britain entered the war. Under the new order of the British Commonwealth, it was thus possible to say that, whereas Canada had been put at war in 1914 by British action, in 1939 entrance into the war was a matter of independent national decision. Since the latter date, too, Canada has followed an independent course. No attempt was made to create an imperial war cabinet as in the first world war, though close official and personal relations were continued. Canadian war activities were conducted, as far as possible, on a separate national basis. Cooperation with Britain—and later with the United States—was primarily founded on special agreements that were carried out by joint or combined boards. Today, when the strains and stresses of war have been replaced by the anxieties and problems of the post-war world, Canada shows clearly the firm decision to play an active if not always a leading part, as an equal among the United Nations, in reconstruction and peace. It may be asserted quite emphatically that whatever external restrictions may appear to handicap Canada in future they will be the result not of her status as a Dominion in the British Commonwealth of Nations, but of her position as one of the lesser countries in a world that may be dominated by the few Great Powers.

The three hundred years of European occupation of the greater portion of North America have seen many changes and alterations of policy. One of the most unexpected developments was the expansion in a new series of British colonies at the very time that the first English colonies were in revolt. Another was

<sup>1</sup>Appendix, p. 344.

<sup>2</sup>Appendix, p. 357.

the experiment of founding a self-governing country on two divergent racial, linguistic, and legal groups. Most significant of all, perhaps, is the progression of the colonial dependencies to the state of equality with the British Isles and the transformation of an empire of dominance and colonisation into one of fraternity and co-operation. For our immediate purpose, however—the study of Canadian government—the importance of this history lies in the manner in which institutions have been evolved to bring Anglo-French communities on the North American continent to their present state of independent self-government in the Dominion of Canada.

#### FOR FURTHER READING:

Noteworthy among recent general narratives of Canadian history are G. M. Wrong, *The Canadians* (1938), D. G. Creighton, *Dominion of the North* (1944) and A. R. M. Lower, *Colony to Nation* (1946). *The Cambridge History of the British Empire*, Vol. VI: *Canada and Newfoundland* (1936) contains comprehensive chapters on all periods and a most extensive bibliography.

Constitutional development is among the most carefully cultivated subjects. Among distinguished contemporary works may be cited C. Martin, *Empire and Commonwealth* (1928) and W. P. M. Kennedy, *The Canadian Constitution, an introduction to its development, law and custom* (1922, 1938). Slighter and less recent expositions are W. R. Riddell, *The Constitution of Canada in its Historical and Practical Working* (1917) and Sir Robert Borden, *Canadian Constitutional Studies* (1921). The nature of the British connection forms a considerable part of G. P. de T. Glazebrook's *Canada's External Relations to 1914* (1942). The documentary side is covered by W. P. M. Kennedy (ed.) *Statutes, Treaties, and Documents on the Canadian Constitution 1713-1929* (1929).

There are innumerable studies of the different periods, the more recent of which have been reviewed in *The Canadian Historical Review* (1920-). For the past generation a running commentary upon constitutional development has been provided by Canadian articles in *The Round Table* (1910-). An informative account of the new status is provided by Sir Robert Borden, one of the prime movers, in *Canada in the Commonwealth: from Conflict to Co-operation* (1929). See also M. Ollivier, *L'avenir constitutionnel du Canada* (1935) and *Studies in Canadian Sovereignty* (1945). The importance of the events of 1918-19 for Canadian international status is stressed in G. P. de T. Glazebrook, *Canada at the Peace Conference* (1942).

### CHAPTER III

## THE CANADIAN CONSTITUTIONAL SYSTEM

### *The Sources of Constitutional Law and Convention*

Constitutional government differs from arbitrary government in being a system in which political authority is exercised according to established rules and procedures. It is a fairly modern invention or achievement; few countries have originated a distinctively unique set of principles for themselves. Usually, a people seeking to establish a constitutional system have copied or adapted to their own needs the dominant features of one which has proved effective elsewhere. In the case of Canada, where the major concepts of British constitutional government have been inherited, the chief external borrowing has been from the United States, which likewise has a basic British heritage. Canada's constitutional system is thus a characteristic combination of British and American principles blended to suit Canadian circumstances.

The very fact of combining elements of two different systems inevitably introduces some difficulty of understanding and interpretation, for some people tend to emphasise the British aspect of Canadian institutions and others tend to stress the American. This divergence may be observed in the use of the word "constitution." In American usage, "constitution" refers to a document prepared one hundred and fifty years ago to establish the union of the previously separate colonies or states. In this sense, the British North America Act of 1867 is the Canadian constitution. But in British usage, "constitution" refers not to any document but to the actual system of government under which the people of Britain live. The word is also used with this meaning in

Canada, and, indeed, the British North America Act itself asserts in its preamble that the federating colonies desired to be united "with a Constitution similar in principle to that of the United Kingdom." Accordingly, while Canada possesses a document that looks like the American constitution, this document purports to establish a system more like the British, though the latter is unwritten. At first sight, it may seem that this is merely a nominal difference; but in reality it is quite important. In the United States the written constitution is the final source of all authority and its words are literally the fundamental law of the land. In Britain, on the other hand, where there is no such written fundamental law, the constitutional principles are not to be deduced from the words of any document but are to be found in a mixture of legal rules and customary practices. To which of these types does the Canadian "constitution" conform? There is good reason to think that the British North America Act is not an absolute fundamental law in the full American sense, though it is much more so than would be expected if the British meaning were followed completely. It will aid in avoiding ambiguity, therefore, if we drop the word "constitution" and specify the British North America Act when that document is meant and speak of "constitutional system" when reference is made to the whole body of rules and institutions which exist in Canadian government.

There are two historical reasons why the British North America Act of 1867 possesses its peculiar status. One is to be found in the purpose for which it was drafted; the other springs from the late development of Canadian autonomy. The British North America Act was primarily concerned with the union of three colonies and its terms are largely confined to the relatively technical aspects of the federal union desired by the colonies. The Act is therefore essentially a legal statement of the terms and conditions of union as conceived and formulated some eighty years ago. The greater part of the Act is devoted to dividing authority between the central and provincial governments. But, while appropriate central institutions were created for the new

Dominion, the Act is almost entirely silent on the vitally important question as to how these organs should really function, except in so far as they were related to the provincial governments. There is no doubt, however, that the Fathers of Confederation intended that the political system in the central government should continue to follow the British forms of parliamentary government. This was indicated by the words of the preamble of the Act as already quoted above, and which followed the specific injunction of the third Quebec Resolution:

In framing a Constitution for the General Government, the Conference, with a view to the perpetuation of our connection with the mother country, and to the promotion of the best interests of these provinces, desire to follow the model of the British Constitution, by the Sovereign personally, or by the representative of the Sovereign duly authorised.

That the parliamentary rules of the British monarchical system were not specifically stipulated in the Act was due to the fact that they were already fairly well in operation in the provinces, were well understood, and were regarded as incapable of definitive statutory declaration. The British constitution is only partially founded on law, for a considerable portion of it rests on convention and usage, and the absence of written statement is commonly held to preserve an admirable and useful flexibility. For this reason the Act of 1867 was not intended to be a complete and final declaration of the constitutional principles; the Act was chiefly expected to be a definition of federal relations. Parliamentary principles were assumed to be carried along without definition, and were intended to be read into the Act where necessary.

The other reason for the peculiar position of the British North America Act is equally important. The Act of 1867 was passed by the British Parliament for communities whose status was then quite definitely "colonial". Autonomy, as it is understood today in the British Commonwealth of Nations, was not anticipated. Many of the provisions of the Act relating to the exercise of



Canadian powers were known to be subject to the overriding authority of British legislation, and the exercise of royal power in Canada was still understood to be directly under the supervision of British ministers. Gradually, in the course of the next fifty years, all this changed completely. No British legislation is now made for Canada unless requested and no British officials have any influence on Canadian internal or external affairs. Many provisions of the Act of 1867 which were appropriate to a colony are now entirely outmoded, yet few formal changes in the Act have been made by amendment, since most of these advances in status have been the result of alteration in usage and convention. It is impossible, therefore, to regard the Act of 1867 as being completely definitive of the constitutional system of Canada. Although a considerable effort is made to adhere to the federal terms of the British North America Act, there can be little sympathy with the view that the words are always literally binding. Custom and usage, and often too the law itself, deviate from the terms of the Act as originally passed or since amended. Nevertheless, the position has not yet been reached where the Act is simply one of a number of documents—as is the case, say, of Magna Carta in the British constitutional system.

The Canadian constitutional system may be said to be composed of two elements: (a) those principles of British government which have been considered appropriate to the circumstances of the Canadian people; and (b) special innovations and adaptations which have been made to supplement or supersede the usual British rules and practices. These two elements are merged in a distinctive Canadian system. As the country came under British rule at different times and under different circumstances, and as conscious adaptation of British principles has been made by several authorities for various purposes, the two elements are not fully embodied in any one document nor is there always complete agreement as to the relative importance of one or other of these elements. Generally speaking, it may be said that the major British principles are those relating to parliamentary government and that the chief innovations have

been the result of adopting the American principle of federalism. The greatest difficulty in the system springs chiefly from the fact that, when the Act was drafted, it was the American principle which was carefully written out while parliamentary procedures were assumed and not specified. Moreover, the written document was prepared in colonial times and was phrased in such old-fashioned terms that though it may then have seemed to mean exactly what it said, this can no longer be assumed. The Act of 1867 has to be read in the light of many other unstated principles which govern ministerial responsibility and accord to Canada a status of national equality with Britain.

The Canadian constitutional system may now be defined as the somewhat complicated and interrelated body of rules and procedures which govern the conduct of public affairs in Canada, regulate the relations of the several official organs, determine the part to be played by political organisations, and establish the rights and duties of citizens and residents of the country. This body of rules falls into two great divisions—principles of law and practices accepted as good usage. The forms in which these are expressed, or the sources from which they are drawn, are fourfold: *statutes* and *judicial decisions* for the principles of law; *historic declarations* and *conventions* for the rules of good usage.

(a) The *statutes* are chiefly Acts of the British Parliament applying to the colonies generally or to Canada in particular. Though approximately one hundred British statutes applying to Canada have been passed since 1760, the most important ones are the dozen or so which have contained some regulation of governmental machinery. These commence with the Quebec Act of 1774 and extend to the Abdication Act of 1936. Midway in this line of British statutes is the British North America Act of 1867. Since the latter Act, the rule has grown up that British statutes should only be passed for Canada at Canadian request, and this was finally specified in the Statute of Westminster, 1931, which also provided that Canadian legislatures might repeal any of the former British statutes save the British North America

Act itself and certain amendments. The importance of British statutes will therefore decline in the future and their place will be taken increasingly by Canadian statutes. Some Canadian statutes are already of great constitutional importance, such as those establishing the provinces of Manitoba, Saskatchewan and Alberta, the War Measures Act of 1914, and statutes establishing government departments, the Supreme Court, and electoral procedures. No complete list of these statutes can be given here, but the most important ones will be referred to as the several branches of government and politics are described later.

(b) The *judicial decisions* are statements of the law relating to specific disputes which have been submitted to the courts. In deciding these disputes, the judges are in the habit of stating the reasons for their judgments, and the principles therein enunciated possess an influence which is characteristic of the English common law system. It is traditional that a rule once applied by the highest court to a set of facts will be followed in later disputes of a similar nature. This principle, known as *stare decisis*, means that the law declared in one case forms a binding precedent for the future, and the consequence is that one can best study the law by reading the decisions in former cases. Of course, a precedent so laid down by the courts can be altered by a statute passed by a legislature with authority over that particular subject of law. All English decisions (appropriate to Canadian life) which had been made before the settlement of the country were introduced with the statute law at the same time. Examples of the old English decisions carried to Canada are those relating to jury trial, freedom of the press, rights of the Crown and privileges of the subject. The greater number of new decisions are now made by Canadian courts, though the most important disputes have been carried on appeal to the Judicial Committee of the (British) Privy Council for final decision. This is notably the case in disputes over the interpretation of the British North America Act, and in this respect it is true that Canadian decisions have been less influential in shaping the development of the Canadian law of the constitution. The very recent elimination

of Privy Council appeals will leave Canadian decisions as the only ones of constitutional significance for the future.

(c) Numerous principles of constitutional practice are derived from *historic declarations* or documents. Most of the early constitutional documents were intended to impose restrictions on the king—such as Magna Carta of 1215, the Petition of Right of 1628 and the Bill of Rights of 1688—all of which are part and parcel of the English constitutional inheritance carried by the colonists to Canada. In addition, there are some historic documents which have a special Canadian application, such as the treaty provision of 1763 respecting toleration of Roman Catholicism for the French, the principle of responsible government explained in the Durham Report of 1839, and the definition of Dominion Status in the Balfour Report of 1926. In this category, too, should be placed the declarations respecting succession to the Crown as expressed in the preamble to the Statute of Westminster. Some of the specifically Canadian declarations have a Canadian origin, and among such must be numbered the Quebec Resolutions of 1864 and Sir John Macdonald's exposition of the grounds upon which the Dominion government may disallow provincial legislation (1868).

(d) Finally, there are the *conventions* of parliamentary practice which have grown up in the evolution of responsible ministerial government in Britain and Canada. The early colonists did not carry with them the distinctive English usages of cabinet government because the most significant rules were developed after colonisation of the American continent commenced. Even in Britain the full implications of the new usages were not appreciated until the middle of the nineteenth century when it was gradually realised that the cabinet system had effected a revolutionary change in the nature of parliamentary government. One hundred years ago, these conventions, so far as applicable to the colonies, were known as "responsible government". As they were not part of the "law of England", it was considered inappropriate to specify them in the British North America Act of 1867. Even earlier, in 1839, Lord John Russell, then Secretary of State for

the Colonies, had written to the governors: "It is evidently impossible to reduce into the form of a positive enactment a constitutional principle of this nature." This remains true today. Nowhere have the conventions of ministerial government been successfully and completely reduced to written or legal form. But they are just as definitely a part of the Canadian constitutional system as the law which omits them. These conventions, e.g., that a ministry not possessing the confidence of the lower house must resign or appeal to the electorate for support, are to be found in the memory of politicians and in the precedents formed by significant events of recent years. They are understood to be a background against which statutes and judicial decisions are to be interpreted. They are commented on and explained or analysed in the writings of recognised authorities and publicists. It is quite definitely assumed that these usages override the statement in legal terms of older rules of law. Since 1926, when Dominion ministers (instead of British ministers) were declared to be the advisers of the King on all Dominion matters, it has been understood that British practice does not entirely govern Canadian usage although it carries great weight. Special Canadian conventions often exist and differ from the British rules. In practice, the Canadian conventions are interpreted and applied by Canadian politicians with ultimate resort for confirmation to the Canadian parliamentary electors.

### *Form and Reality: Parliamentary Government*

The deceptive appearance of the British North America Act as a complete Canadian "constitution" is not the only handicap placed on easy understanding of the constitutional system. It is also a significant feature of Canadian government that some institutions do not necessarily possess the importance nominally attributed to them. It is almost as true for Canadian as for British government that nothing is what it seems and nothing seems what it is. This paradoxical situation is the result of historical development in which ancient forms have been retained while the real processes have completely

changed. The retention of older institutions after they have lost their real functions provides many confusing forms and fictions whose meanings have to be understood before the actual nature of Canadian government can be ascertained. In general, this curious heritage has given to the Canadian constitutional system an appearance of conservatism which cloaks quite radical innovation and improvisation. Thus Canada retains the form of monarchical government though the practice is essentially democratic; the very name "Dominion" implies a state of dependence completely belied by a very real state of independence; and the insistence on Dominion national autonomy conceals a basic necessity for decentralisation.

So far as institutions are concerned, it must be borne constantly in mind that the importance of Canadian organs of government bears no relation to the prominence given them in legal terminology. This may also be true of every constitutional system, but it is especially the case for those systems derived from British origins. It is necessary, therefore, to distinguish carefully between fact and fiction, form and reality in Canadian government. The most vital institutions are often those possessing authority and functions technically attributed to formal organs which are themselves impotent, and the formal bodies are often those through which the real organs of government have to work. This distinction is comparable to, though not identical with, that made by Walter Bagehot when dividing English institutions into "dignified" and "efficient". At the same time, it must be noted that, as the formal institutions usually have their fictitious functions specified by law, numerous complications occur when reliance is placed primarily upon the legal and technical terms of constitutional law.

Governmental institutions for Canada have been grouped at three levels—provincial, Dominion, and imperial—and at each of these levels it will be found that distinction between formal and real authority has to be made. It is, however, at the highest level—the imperial—that the loss of authority by the formal institutions is most noteworthy. Of all the old British or im-

perial institutions which have nominally or actually exercised any control over Canada—namely, King, Parliament, Privy Council, Cabinet, or Imperial Conference—not one now possesses intrinsic influence, especially since the recent elimination of the Judicial Committee of the Privy Council as the final court of appeal in Canadian legal disputes. The others have all been deprived of their authority by law or convention, and any position they still hold in the constitutional system is purely formal. Although the King nominally concludes treaties for Canada, he does so entirely at the instigation and direction of Canadian officials; though the British Parliament alone may amend the British North America Act, it does so promptly at Canadian request; and though the participation of certain British ministers was often required (before 1939) for validation of documents of special importance, this was automatically forthcoming when needed. Even the Imperial Conference, which gave authoritative expression to the meaning of Dominion Status, can only function (so far as Canada is concerned) with Canadian consent and approval.

At the Dominion level, the division between formal and real institutions though less clear is nevertheless equally important. The Governor-General in Council is constantly specified as the royal agency of executive authority, yet in reality all administrative direction is controlled by the Cabinet. Laws are made nominally by the King “by and with the advice and consent of the Senate and House of Commons of Canada”, but in actuality the King takes no part, and for most of the time the distinctive role is played by the partisan majority of the House of Commons guided by the Cabinet. Adjudication of legal disputes is only partially performed by the “Dominion” courts, for the greater part of litigation is handled by provincial or local courts.

At the provincial level, however, the line between formal and real is somewhat less evident. Yet in some respects the same fictions are maintained. The Lieutenant-Governor in Council is the formal executive organ, though the Cabinet (which in this case coincides with the Council) is the real power. In six

provinces legislation is formally enacted by "His Majesty by and with the advice and consent" of the particular local legislature. (In Nova Scotia, New Brunswick and Prince Edward Island the laws are enacted by the "Lieutenant-Governor by and with, etc.") In every province justice is meted out in the name of the king. Yet in truth everyone knows that laws are made and enforced by local and provincial bodies.

From the above statement it will be clear that there is sufficient disparity between fact and form of government in Canada to impose continuous care in discriminating between formal or nominal organs of government and those which have real or actual functions to perform. To a large extent, of course, it will be evident that these peculiarities spring from retaining the forms of constitutional monarchy while the spirit and practice of government is fundamentally democratic, if not pseudo-republican. But this is not the whole story. It is apparently in the nature of the parliamentary cabinet system that political power should be concentrated in organs which cannot have their legal powers specified in adequately definitive terms. This is perhaps inevitable in a changing or developing constitutional system where the letter of the law is constantly behind the stage of contemporary practice.

The fact is, then, that despite the legal forms Canadian government functions as a type of parliamentary government in which ministerial responsibility is the primary principle. The voters choose partisan representatives as members of parliament and the leaders of the parliamentary majority constitute the Cabinet and control, directly or indirectly, all administrative and legislative processes until they are superseded by others. The rulers of Canada are thus ultimately responsible to the citizens of the country. Despite the trappings and fictions of monarchical government, the central principle in the constitutional system is ministerial responsibility. In practice, it may be added, the distinctive feature of Cabinet government is the dominance of the Prime Minister. The Cabinet is primarily selected by the Prime Minister from the foremost members of



the majority party of the House of Commons. Indeed, although no reference to Cabinet or Prime Minister is to be found in the British North America Act, the Prime Minister and his Cabinet are the focus of the entire system. The Prime Minister is the acknowledged leader of the parliamentary majority. Practically every legislative vote is a test or demonstration of his influence. When the end of the legal term of Parliament is approaching, or even earlier if his authority is seriously challenged in the House of Commons by an adverse vote, it is the Prime Minister who determines the nature and occasion of an appeal to the electorate. At the time of a general election, it is well understood that the voters are casting their ballots less for the local member of parliament individually than for or against the Prime Minister. Opposing him in such an appeal to the country is the Leader of the Opposition party, who, should his party secure a majority of parliamentary members, would then displace the former Prime Minister as head of the government and would have the privilege of naming the Cabinet from the prominent men of the new majority party.

Regardless, then, of the old formal or legal institutions of Canadian government, a central feature of the system is the popular, though indirect, election of the chief member of the Cabinet. The Prime Minister is as much the people's choice as is the President of the United States. The House of Commons may be regarded as the Canadian "electoral college", but an electoral college which does not disband after performing its function of registering the presidential election. The House of Commons continues to serve as the chief legislative chamber for Canada, and has the added advantage of being a legislative body which is in political harmony with the Canadian president or Prime Minister. The House of Commons thus has a double function: it registers the popular vote (which is nominally cast for members of the House) and it continues to endorse the Prime Minister's legislative and administrative policy until the maximum term of five years expires or until a new issue arises and the trend of opposition to the Prime Minister has gained

such momentum that he has to make another appeal to the electorate. For administrative purposes the members of the Prime Minister's Cabinet take charge individually of the numerous departments of government, but they stand together with him in the public eye and are definitely subject to his supervision and dismissal.

But it must not be imagined that because the Canadian Prime Minister may be compared to the American President he is therefore at the centre of a similar system. The very fact that the House of Commons combines the functions of the American electoral college with those of a legislative body under the leadership of the Prime Minister introduces a major distinction. Perhaps the chief evident difference between the Canadian and American systems is that the Prime Minister and his Cabinet colleagues face the Commons daily during its sessions and are in "constitutional" instead of merely "political" contact with it. There is no actual "separation of powers" in Canadian theory, although the legal terminology might lead to that assumption. There is no pretence that ministerial influence on legislators is improper in the way that presidential pressure is often said to be in the United States. Instead of Cabinet and Parliament being theoretically separate, as the President and Cabinet are separate from Congress in the United States, the close relationship of Cabinet and Commons is an essential condition of the Canadian system. Indeed, the connection of ministers and parliamentarians—particularly with respect to modes of discussion and debate, origination of money bills, privileges of the Opposition, etc.—is itself the subject of many special constitutional rules. But none of these interfere with the basic features of the Canadian system—a Cabinet dominated by the Prime Minister, the House of Commons elected by the voters, and ultimate control exercised by the electorate. The really important institutions are kept in harmony by the Prime Minister who is the chief member of the Cabinet, majority leader of the Commons, and the successful party leader endorsed by the voters. A similar situation is to be found in provincial government.

Yet there is not a word of this in the legal forms or in the words of the British North America Act. In constitutional law the Crown is the pivot or focus of government: the King is represented in the Dominion by the Governor-General and in the provinces by Lieutenant-Governors; these royal representatives nominally participate in all legislative enactments and in most executive appointments. No indication exists in the forms of law that all Cabinet ministers must be members of parliament or shortly become such, or that they must be designated by the leader of the majority party.

*Fact and Fiction: Federalism*

In addition to the deceptive appearance of the parliamentary system, Canadian government is further complicated by federalism. This has already been indicated when it was remarked that parliamentary institutions exist at three levels. So far as the realities of government are concerned, the effect of Canadian self-government according to parliamentary principles has been to reduce to a merely nominal or negligible role the imperial parliamentary institutions which are external to Canada. The same result has not been attained in the case of either of the sets of parliamentary institutions within Canada itself. The functions of government are actually, as well as formally, carried on at two different levels, Dominion and provincial. This is the consequence of federalism.

The very fact that there are duplicate parliamentary institutions implies that the Canadian constitutional system differs radically from the British model. Federalism is an American device, and the distinctive character of the Canadian system lies in the particular adaptation that has been made of British parliamentary government in a federal state. It has sometimes been said that the parliamentary and federal principles are so incompatible that their union must result in conflict and disharmony. Whether this is so or not, it may be conceded that federalism does introduce important modifications into parliamentarism. These modifications have to be clearly understood

in order to appreciate the problems of the Canadian constitutional system.

The first thing to be noted about Canadian federalism is that it rests upon an entirely different foundation from parliamentary government. Cabinet government, as a British development, was only introduced into the British North American colonies by gradual stages. Federalism, on the other hand, was copied from the United States at one particular moment. The rules of the Cabinet system display great flexibility; from their original use to secure responsible government in the colonies, they have slowly matured with the growth of "Dominion Status". The principles of the federal system, however, are usually thought of as semi-rigid, if not entirely rigid; they are recorded specifically and definitively in the British North America Act of 1867. On the face of it, therefore, one may always look back to that Act as determining the type of federalism, though one cannot regard that Act as fixing the nature of parliamentary government.

Although there is a definitive document ostensibly creating the actual federal system, this does not mean that this side of the constitutional system is free from ambiguity and illusory aspects. If the truth of cabinet government is obscured by retention of ancient forms, the facts of federalism are equally shrouded by fictions. There is, for example, the curious treatment of executive authority. It is a legal dogma that the formal executive authority (the Crown) is an indivisible unity. Federalism, however, requires that real executive authority should be divided, as indeed it is, between Dominion and provincial ministries. In theory there has been invented a fictitious partition of royal authority termed technically "the Crown in right of the Dominion" and "the Crown in right of the province." The King (Dominion) has never sued the King (provincial) as has been done in Australia, but the same consequence is attained when Dominion and provincial governments are at odds and His Majesty's Attorney-General for the Dominion appears in court to confute His Majesty's Attorney-General for a province. This is, of course, quite impossible in a unitary parliamentary

system such as Britain's where all His Majesty's advisers are united in a single cabinet which settles such conflicts politically in the secrecy of the ministry. A comparable fiction exists respecting legislative authority. There is a legal dogma of parliamentary supremacy or sovereignty. This is completely false in any federal system, since division of authority is of the essence of federalism, but it persists as a fiction which has been trotted out to resolve disputes involving parliamentary privileges. The best Canadian theorists usually qualify legislative supremacy with the phrase "within the scope of the legislature's jurisdiction", which simply means that a legislative body can only do what it is authorized to do. Parliamentary supremacy, in the Canadian sense, really indicates that there is no bill of rights imposed on the legislature in addition to the limitations arising out of federalism.

Some of these fictions spring from the efforts of constitutional lawyers to adapt the monarchical forms of the parliamentary system to the realities of a federal state. They become a complication only when a fiction about a formal organ is taken as the basis for constitutional reasoning as to the exercise of real powers. This was notably the case in a judicial decision respecting the consequences of provincial incorporation of companies. Other fictions flow from legal efforts to rationalise the federal division of legislative jurisdiction. Thus the use of the word "exclusively" in sections 91 and 92 of the British North America Act, where the scope of Dominion and provincial legislation is defined, has led the courts to propound the doctrine that there is an absolute and complete division of authority. This is evidently fictitious, for the powers of government are incapable of such a bifurcation; nor is this complete separation intended, as other provisions of the Act reveal. This fiction, however, has often been employed with serious consequences as the ground for judicial decisions concerning the actual division of functions. Probably the most important of all these interpretations is that placed on the provisions of the Act of 1867 respecting the executive veto. Although the letter of the law is practically

the same for both Dominion and provinces—Section 90, for the provinces, carried over the Dominion rules of Sections 55, 56, and 57 “as if those provisions were here re-enacted”—two totally different practices have been evolved. It would now be regarded as entirely “unconstitutional” for the royal veto to be used over Dominion legislation, but it is apparently in accord with usage for the comparable royal veto to be exercised over provincial legislation. The explanation of this divergence is to be found in the fact that the executive veto of Dominion legislation meant control by British ministers, whereas executive veto of provincial legislation was intended to enable the Dominion ministers to restrain the provinces. The consequence is to provide the central government with a check on provincial law-making that is quite unknown in the American federal system. That the executive veto could be expressed in statutory form with such different practical results is perhaps an indication of the utility of such legal fictions as the one that executive veto is a royal prerogative capable of being used or not being used by the representatives of the Crown under certain circumstances that constitutional custom dictates.

The fictions which accompany Canadian federalism are the product of combining two divergent theories of constitutional authority. Parliamentary government rests on the doctrine that a single parliament, containing representatives of the voters, is the final organ through which public will is expressed in a country. Federalism requires a multiplicity of representative legislatures, most of them representing but a section of the country, with the consequence that the expression of public will is dispersed through several agencies. A federal state thus seems the very opposite of a parliamentary state. While parliamentary government is characterised by a tendency to constitutional unity, which is embodied in a responsible cabinet, federalism tends to produce constitutional limitations for the purpose of preventing unity. It is assumed in Canada that even though the King (or Governor-General), Senate, and Commons act together under ministerial guidance and with electoral approval, they are nevertheless restricted in their powers. They are

expressly forbidden to intrude upon the subjects of legislation and administration entrusted to provincial institutions. The Dominion government, though representative of the whole country, is constantly checked by the existence of rival parliaments—King (or Lieutenant-Governors) and legislative assemblies—acting under the guidance of other sets of ministers and with the approval of particular segments of the country's electors. The fact is that the federal division of functions involves a curtailment of parliamentary powers and does actually introduce constitutional limitations and checks.

To put this point in terms of cabinet government, it may be said that federalism creates a hiatus in ministerial responsibility. With a federal division of powers there is necessarily a large area of government for which no body of "responsible" ministers is responsible. A political party may be elected to power in either Dominion Parliament or provincial legislature with a mandate to accomplish a certain purpose, but the leader of the party, as head of the ministry, may then find that the authority of the government he controls is strictly limited. The political responsibility of ministers is thus regularly defeated by the existence of federal restraints.

Complete coverage of the whole field of government is only possible by effective co-operation of several cabinets and legislatures. Indeed, politicians are tempted to seek popular endorsement for policies they know are incapable of constitutional execution in the institutions they control. They can thus throw on other shoulders their responsibility for failure. Often, too, they are led into confusing the public by entering into constitutional conflicts with ministries of a different party complexion in another part of the federal system. This is one of the respects in which the Canadian constitutional system departs most definitely from the British model and approaches that of the American type. In Britain the parliamentarians have full power to determine in every respect the methods and lengths to which they may go. Ministers can therefore be held responsible for success and failure in their programmes and their political opponents have no

constitutional organs through which a determined cabinet may be thwarted. In Canada, however, as in the United States, no one set of politicians in any one place are responsible for entire control of the country's destiny.

There is also an important constitutional consequence of the combination of federalism with parliamentary government so far as Canada's status as a Dominion is concerned. Originally the British North American legislatures were limited in jurisdiction because they were subordinate to the British Parliament, and colonial "responsible government" was necessarily restricted by this inferiority. The Confederation of 1867 made possible the growth of a Dominion whose status could ultimately equal that of Britain. After 1926 the colonial limitations on Canadian parliamentary government were entirely removed. Yet at the same time, the very Confederation which had permitted this development also prevented its full attainment in the British fashion. The introduction of American federalism carried with it the doctrine that the legislative powers of a fully self-governing country could also be restricted for federal reasons. Instead of Dominion Status endowing the Canadian Parliament with complete supremacy (as was the result in South Africa), it was found impossible to attribute sovereignty to any Canadian legislature.

Despite the first hopes of men like John A. Macdonald that a single supreme legislature might be established in Canada, there can be no doubt that it was the firm intention of the Fathers of Confederation to create a polity in which authority should be divided in some fashion between the new central government and the old self-governing colonies. The necessity for such a division of authority was clearly the result of the diversity of the provincial peoples in race, language, religion, law and occupation. These differences are perhaps of even greater influence today. If it was impossible to found the Dominion of Canada on a unitary community under a single government in 1867, it is still more difficult to envisage it at present. Not only have the differences of English and French culture persisted,



but to the previous contrast of maritime and interior interests there have been added the divergent claims of the prairies and of a second maritime region on the Pacific coast. Accordingly, the system which was set up in 1867 and which must be retained in its major features is one in which the scope of central government cannot correspond to that of the United Kingdom.

The consequence of this divergence of the Canadian constitutional system from the British was definitely displayed when the Statute of Westminster, 1931, was approved by the British and Dominion Parliaments for the purpose of proclaiming Dominion constitutional equality with Britain. Canadians considered it improper to have it specifically asserted that the Canadian Parliament should be heir to the sovereignty renounced by the British Parliament. A special "Canadian" section (Section 7) was therefore inserted in the Statute for the purpose of maintaining the federal division of power. It was agreed that the removal of the old colonial restraints was not to mean that any Canadian legislature was thereafter unrestricted. The following are the decisive words employed in the third sub-section of section 7:

"The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively."

In other words, if the Dominion government was to profit by the British renunciation of supremacy it was only within its pre-existing sphere as a central government; the provincial governments were to benefit equally by British renunciation in the provincial sphere.

### *Constitutional Interpretation*

The Canadian constitutional system is a tangled web of a legal rules and political practices governing the transaction of public business by the Dominion and Provinces of Canada and regulating their official relations with Britain and other countries.

This body of procedures is complicated by its retention of ancient forms cloaking modern realities and by the invention of legal fictions to harmonise the supposed principles with the facts of Canadian government. Under such circumstances it can easily be perceived that the subject of "interpreting the constitution" occupies an important place. A system which combines such apparently antithetical principles as ministerial responsibility and federal division necessarily gives rise to considerable controversy. Occasionally the issue is posed as the simple question, Should not the trappings of British monarchism be abandoned? More frequently, however, the problem is stated as, Is not the American innovation of federalism more fundamental than parliamentary government? The first question is undoubtedly a false issue that springs from confusing the matter at stake with democracy. True democracy is inconsistent with real monarchy, but monarchical forms of great antiquity are not inconsistent with real parliamentary democracy. Whether monarchical forms should be preserved or not rests on other considerations—such as the affection that is felt for ancient institutions or the desirability of maintaining a formal connection through the kingship with other British countries. It has little to do with the primary question of how the constitutional system is to be interpreted and understood today.

The second question is more pertinent, but appears wrongly phrased. Under its influence, however, those concerned with the exposition and understanding of the Canadian constitutional system have often tended to be "Americanisers" or "Anglicisers". A distinguished English authority, A. V. Dicey, was among the first to elaborate the thesis that the Canadian constitution is essentially American. He declared that the preamble of the British North America Act—as quoted at the beginning of this chapter—should have read "with a constitution similar in principle to that of the United States." One of the first Canadian commentators, O'Sullivan, concurred in the hope that full acceptance of American doctrines would finally occur. On the other hand, it must be noted that concentration on the

removal of colonial limitations on Canadian government has encouraged autonomists to try to elevate the Dominion Parliament to equality with the British. To nationalists, at least, the parliamentary system is felt to be more appropriate for the creation of national unity than federal decentralisation. The course of interpretation has thus varied considerably. Nevertheless, in general, it may be said to have pursued a middle course and to have sought a synthesis of the British tradition and the American innovation. Although this has not been completely successful—and perhaps may be impossible—the consequence has been that neither parliamentarism nor federalism has yet effaced the other. This is indeed an essential condition of Canadian constitutionalism. It is true that many of the difficulties of the system arise from the opposition of British inheritance and American imitation, but the solution is not necessarily to be found in the dominance of one over the other. Both principles are essential. Canada could not have become an autonomous Dominion without parliamentary government nor could she have come into existence at all except as a federal state.

The primary purpose, then, of all constitutional interpretation has to be directed to accommodating and reconciling the two principles which characterise the Canadian constitutional system. It is not enough that the forms of parliamentary government should be extended by new fictions to the necessities of a federal state; there has also to be recognition that the real foundation of parliamentary authority is modified by the fact of decentralisation. The difficulty of maintaining a balance between these two aspects comes from the existence of two different ways of viewing the constitutional system, two different types of rules to be interpreted, and two different sets of interpreters. From the parliamentary view, the "constitution" is basically unwritten, its distinctive rules are conventional, and the proper interpreters are parliamentarians whose interpretation is subject to appeal to the electorate. On the other hand, from the federal viewpoint, the "constitution" is written in the British North America Act which is regarded as a fundamental law

of federalism, and its interpretation is vested in the judges—Canadian courts subject to appeal (up to the present) to the Judicial Committee of the Privy Council. In these respects the Canadian constitutional system is neither completely British nor American.

In Britain, where there are also rules of law and usages of conventional type, the parliamentarians can force a reconciliation of law and convention through their control of statutory changes of law. But this is not quite the case in Canada. Dominion as well as provincial parliamentarians are limited in the scope of their control of statutory changes of law. To some extent, therefore, the Canadian position is comparable to the American. In the United States, law prevails over convention and the judges have the privilege of confining Congress and the state legislatures to their legal jurisdictions. The written constitution is a fundamental law and this legalism is enforced by "judicial review", the practice of determining all constitutional disputes, including the will of the legislators, by appeal to the decisions of the courts of law. Canada possesses some aspects of this, but not in its complete form.

In all that normally pertains to cabinet government within any set of parliamentary institutions, the Canadian system follows the British tradition. Although the British North America Act specifies that the King or his representative shall have certain powers, it is well understood that this legal phrasing is to be interpreted in the light of the conventions regulating ministerial responsibility. Whether the courts recognise this or not is immaterial, for the parliamentarians are careful to observe the legal forms prescribed. But even when a direct contest over interpretation of the legal phrases of the Act does arise, the discussion is carried on in terms of parliamentary conventions. For example, in 1926 the Governor-General refused to dissolve Parliament as advised by the Prime Minister. According to the letter of the law the Governor-General was entitled to exercise this executive discretion of refusal, but according to the conventional rules there was some doubt as to the existence of

this reserve of royal authority to reject ministerial advice in such a case. No one suggested submitting this dispute to the courts for their interpretation, as would have been the position under the full practice of American judicial review. The question was debated entirely on the basis of the best practice in the British type of parliamentary government and, when the parliamentarians themselves could not agree, the practical issue of who should be prime minister and thus have the right to advise the Governor-General was actually taken to the electorate. On the other hand, disputes over the federal system are regularly referred to the courts for their adjudication—similar to American practice. The terms of the Act of 1867 relating to the division of powers between Dominion and provinces are regarded as endowed with a special legal authority that makes it inappropriate for legislators to decide controversies as to jurisdiction. Thus, when a new subject of legislation, civil aviation, which was not contemplated in 1867, came into dispute between Dominion and provinces fifteen years ago, it was assumed that a court could best determine the location of the power of regulation.

The Canadian constitutional system thus displays a distinctive combination of both legal and conventional interpretation. In matters pertaining to the conventions of parliamentary government the British practice of relying on political interpretation is followed, but in conflicts of jurisdiction in the federal system the American practice of judicial interpretation prevails. Unfortunately, however, the two modes of interpretation cannot be completely separated. A constitutional system is necessarily a complicated tangle of mutually dependent institutions and rules and it is frequently difficult, if not impossible, to apply two different tests of validity to the interrelated aspects. An example of the disparity between the two methods of interpretation is to be found in the treatment of Canada's treaty-making power. In 1867 Canada was a colony and could make no treaties, although the Dominion Parliament was given authority under Section 132 of the Act to carry out the obligations of imperial treaties. In 1923, however, Canada gained the right—as a

matter of ministerial convention—to make Canadian treaties. Fourteen years later the Canadian people were shocked to find that by judicial interpretation the Dominion Parliament did not possess the authority to legislate on those aspects of Canadian treaties which came within the jurisdiction of the provincial legislatures as a result of the federal division of powers. Much of the public annoyance was vented on the final court—the Judicial Committee of the Privy Council—for hindering the full exercise of Dominion autonomy; but it should be clear that the real handicap came from the failure to provide a method by which the legal foundations of the system should be kept in harmony with the growth of the conventional foundations. With two sets of interpreters construing in different ways two different phases of the constitutional system, it should be evident that what is needed is a method of reconciling and harmonising these.

Up to the present direct conflict between political and legal interpretations has been avoided by the willingness of the parliamentarians to accept judicial decision on all matters involving the federal division of powers. The courts have rarely taken the initiative by circumscribing legislative jurisdiction—at least so far as the Dominion Parliament is concerned. Usually, doubt about the appropriate exercise of legislative power is submitted to the courts for an “advisory opinion” and the opinion of the judges is accepted as decisive. This practice, it may be observed, is both a convenient aid to the legislators and an economy for private litigants. It may be noted, too, that this is not the American practice. American courts exercise their powers of “judicial review” because it is their right to do so under the Constitution. But, in Canada, the British North America Act does not directly establish the courts with specific authority to act as guardians of any part of the constitutional system. Their function in this respect seems to rest on parliamentary acquiescence. Indeed, while the United States Supreme Court will not give advisory opinions at all, the Canadian Supreme Court is compelled to do so by Dominion legislation. The Judicial Committee of the Privy Council, as final court of appeal, has

also accepted this practice of judicial interpretation by advisory opinions.

Since the chief form of legal interpretation, in so far as relates to limitations imposed on the Dominion Parliament, is to be found in advisory opinions of the judges, it may be asked what the Dominion parliamentarians do when the judicial opinion is unfavourable to their desires and expectations. Can they, in accordance with British practice, change the law to suit their own wishes? So far as there is a written document or fundamental law, this question means, Can the Dominion Parliament amend the British North America Act? This is a difficult question to answer.

#### *Amendment of the British North America Act*

No aspect of the Canadian constitutional system reveals better the curious and distinctive relation of law to convention than the process of constitutional amendment. As a Canadian "constitution" the British North America Act of 1867 was highly defective in so far as it contained no comprehensive provision for complete amendment in Canada. Many portions of the Act may be changed by legislation, and, indeed, the widest scope is given provincial legislatures which may amend the provincial constitutions "except as regards the Office of Lieutenant-Governor" (Section 92 (1)). But there is no such statement about the whole Act. The reason, no doubt, was that the Act of 1867 was thought of as being no different from any other British statute. It might therefore be repealed or amended by the British Parliament at will. Technically, of course, any British Act passed for Canadian purposes automatically serves in some degree as an amendment, whether so designated or not. By usage, however, it was early established that no such British legislation should be passed except at Canadian request. This conventional rule has now been made a principle of law by Section 4 of the Statute of Westminster, 1931. Section 2 of that Statute also authorised the Parliaments of the several Dominions of the British Commonwealth to amend or repeal

any British statutes applying to them—and this would include their “constitutions”. A special exception was made for Canada—at her own request—and “constitutional amendments” were expressly reserved for federal reasons. Section 7 (1) declared that the new power was not to extend to “the repeal, amendment or alteration of the British North America Acts.”<sup>1</sup> In 1949 further British legislation was secured to modify this so as to permit the Dominion Parliament to amend “the Constitution of Canada” except as to provincial matters and language rights.<sup>2</sup>

In terms of law, therefore, there is still no complete Canadian procedure for constitutional amendment. The British Parliament continues to be the body which has the ultimate power of amending the British North America Act of 1867, and almost a score of material changes have been made in it by this authority. Nevertheless, the old conventional rule that no British alteration of the Act should be enacted without Canadian request does actually govern the matter. It would be quite unconstitutional for an amendment to be imposed without Canadian consent and it would be equally unthinkable that the British parliamentarians should refuse to give automatic compliance to a Canadian request. In practice, the “request” takes the form of an Address to the King from the Dominion Houses of Parliament, and such an Address usually contains the precise words of the desired amendment.<sup>2</sup> Thus, by convention, though not by law, the Dominion Parliament does really control the amending procedure.

On the face of it, then, the Dominion Parliament seems to inherit the real supremacy (so far as amendment is concerned) which was at one time held by the British Parliament. But it must not be thought that the exclusion of Canada from the full formal as well as actual sovereignty envisaged by the general principles of the Statute of Westminster was simply due to an unwillingness to confer the approval of law upon an accepted constitutional usage. It was widely believed that to admit that the Dominion Parliament could amend the constitutional laws

<sup>1</sup>Appendix, p. 338.

<sup>2</sup>Appendix, p. 334.



would be to impair the federal system. In no true federal state, it was said, does the central government possess authority to alter the constitution at will; there is always some procedure for either popular or provincial participation in the amending process. The procedure of seeking amendments by Parliamentary Address was understood to have been devised in the period when Canada was seeking to ensure her autonomy as against Britain. It is unfortunate that Canadian inventiveness has failed to originate a satisfactory method of amendment appropriate to an autonomous federal state. When the Statute of Westminster was under discussion it was hoped that a Dominion-Provincial conference would formulate acceptable rules for a new amending procedure. But, although several such conferences have been held, no progress in this respect has been made. And so the curious and mutually contradictory rules of law and convention still persist.

Dissatisfaction with the present method of constitutional amendment is constantly expressed, though no actual hardship has yet been experienced. Few amendments have really altered the nature of the federal relationship of Dominion and provinces. Most of the early amendments were directed to clarification of ambiguities found by legal interpretation of the terms of the Act of 1867, such as that of 1875 relating to parliamentary privileges or that of 1895 respecting the appointment of a deputy speaker of the Senate. In the present century the Dominion Parliament has acted on three occasions to offset judicial interpretation of the constitution, namely, in 1915, to guarantee a minimum provincial representation in the House of Commons, in 1933 (after the Statute of Westminster) to abolish criminal appeals to the Privy Council, and in 1940 to permit Dominion legislation on unemployment insurance. So sensitive have the Dominion parliamentarians been to provincial rights that when it was proposed in 1905 to alter by permanent enlargement the financial subsidies paid the provinces, a Dominion-Provincial conference was first summoned. The amendment of 1940, transferring unemployment insurance to the Dominion, was not "requested" until all the provincial ministries had given their consent. At

other times, when amendments affecting particular provinces have been under consideration, such as the transference of natural resources to the prairie provinces in 1930, the interested provinces were fully consulted by the Dominion before action was taken. On the other hand, the most recent amendments—representation (1943, 1946), Newfoundland (1949), and the limited Dominion amending power (1949)—were procured by Parliamentary Address without consultation of the provinces, and, on two occasions at least, despite the protests of some of the provinces.

The chief objection to the present situation lies in the fact that there is no complete agreement as to which sections of the British North America Act require unanimous or partial provincial consent before changes can be made. The very moderate and reasonable proposal of M. Lapointe, late Minister of Justice, that there should be an enumeration of the protected sections of the British North America Act, has not found acceptance. Even if it were agreed on, there remains a division of opinion as to the method of gaining provincial consent—whether from the ministries or legislatures, or by popular referendum. To many farseeing reformers, however, this device of protecting the provinces by creating new agencies of resistance to change is anathema. They are probably justified in believing that it would add further inflexibility to the federal system just at the time when release from legalistic construction is desirable. To-day, therefore, as for the past seventy years, the Dominion Parliament remains entrusted with actual (but not formal) control over constitutional amendment. Past experience bears out the view that this does not really imperil the federal system. The composition of the Dominion Parliament, especially the nature of the parliamentarians' partisanship in Canada, remains the best guarantee of maintaining a balance as between Dominion and provinces.

#### *The Limitations on Government Authority*

From what has already been said of the Canadian constitutional system it will be clear why the British North America Act

contains no formal bill of rights and few constitutional limitations other than those arising from the federal division of powers. The principles of the English Bill of Rights are part of the constitutional heritage of the country, but, as in England, they are not specifically declared as overruling or fundamental rules of law restricting legislative enactments. Apart from the federal distribution of power, there are few legal limitations on the scope of constituted authority. Generally speaking, within their respective jurisdictions, the legislatures and executives of the Dominion and provinces are unhampered by prohibitions, but are in this sense sovereign governments.

Originally there were three types of restriction that might be expected to confine Canadian organs of government to reasonable and legitimate limits. First, there were those that rested on British intervention—as by royal veto of legislation (under Sections 55-57 of the British North America Act), by ministerial instructions or directions issued to the governor-general on executive matters, or flowing from provisions of other British statutes (such as the Colonial Laws Validity Act, 1865). These external controls could be exercised to prevent arbitrary, discriminatory or repressive conduct directed against British subjects, minority groups, or aliens. All such British controls have now fallen into complete disuse or have been abrogated by the Statute of Westminster, 1931.

Second, there were some procedural provisions in the British North America Act respecting parliamentary privileges (Section 18), annual sessions of parliament (Section 20) and its five-year maximum life (Section 50), election of the Speaker (Section 44), the quorum of the Commons (Section 48), the initiation of money bills (Sections 53 and 54), and the security of judges (Section 99). These procedural guarantees are still operative, though they are primarily significant as containing the essentials of parliamentary government. They are hardly substantive provisions for the preservation of civil or political rights. Parliamentary privilege, for instance, no more protected Fred Rose, a communist member of parliament, against conviction for

espionage in 1946 than it saved a suspected Fascist from detention in Britain during the recent war. Here it may be remarked that not all the parliamentary principles of the English Revolution of 1688-9 were specified in the British North America Act. No mention is made of the noted prohibition against the King's keeping a standing army in time of peace without parliamentary sanction nor is there any Canadian equivalent of the annual Mutiny Act. Parliamentary control, however, is attained by the responsibility of the minister of national defense, by the necessity of securing parliamentary appropriations, and by a statutory maximum for the services.

Third, the closest approximation to the provisions of a bill of rights relates not to individual rights but to minority privileges. The French language is placed on an equality with English in the Dominion Parliament and courts, just as English is protected in the Quebec legislature and courts (Section 133). Additional protection for a minority in a province might be expected from the general Dominion power of veto of provincial legislation. More specifically, too, where a power that might be used to the detriment of a minority was awarded to the provinces (as in education), a special saving of the rights of established denominational schools was made and the Dominion Parliament was authorised to pass remedial legislation if necessary (Section 93). These provisions, it may be added, have been the subject of much litigation in the courts and at times, as during the Manitoba School Question of the 1890's, a bitter issue in national politics. Nevertheless, it is clear that chief reliance for the protection of minority rights is placed upon political processes—the influence of the French members of parliament and their representation in the cabinet, usages respecting Catholic and Protestant seats, and, most of all, the cultivation of a tolerant spirit.

Although there are no prohibitions in the American sense against *ex post facto* legislation, discrimination on the basis of race or colour, or against the invasion of private rights, it is well understood that these are not to be left to the hazard of partisan politics. Canadians inherit the constitutional traditions of the

English Bill of Rights. The essential principles of *habeas corpus*, jury trial, freedom of speech, press, religion, property, and person are rooted in the ordinary law of the land. Slavery never existed as part of the English law carried to Canada and so required no constitutional amendment to abolish it; nor has it been necessary to specify the privileges and immunities of citizens.

Two comments, however, must be made. The absence of constitutional provisions has avoided the rigidity of judicial interpretation of right such as has frequently handicapped social reform in the United States. On the other hand, the danger of invasion of personal right has undoubtedly increased in recent times, occasionally from the intensification of class and group antagonisms, more frequently from poorly instituted extensions of the "service state" concept, and most of all from resort to emergency powers in war.

That participation in war introduces great problems for constitutional government has long been known. In Canada the lengthy duration of the first and second world wars has produced some critical questions for parliamentary control, the federal division of powers, constitutional interpretation, and civil liberties. The British North America Act is silent on the subject of war powers; indeed, the matter was relatively unimportant until 1914. In the past thirty-five years, however, the existence of a state of war on two occasions has worked, temporarily at least, profound changes in the system. The nature of parliamentary government necessarily undergoes transformation in the face of military requirements—such as curtailment of public debate on certain topics and the enlargement of executive discretion; the federal division of powers is distorted by the introduction of central direction and regulation extending over numerous provincial matters, to say nothing of the exceptional financial requirements of the national war administration. The most ardent adherents of a legalistic interpretation of the constitutional system acquiesce in a flexible construction of Dominion powers for the purpose of meeting the novel problems of "total war,"

and the courts display the greatest reluctance to interpose restraints on authority exercised during the emergency. After the first war (1914-18), it was agreed that the return of peace restored the former combination of parliamentary government and federalism, with its balance of legal and conventional rules. In 1945, however, the cessation of hostilities did not automatically produce this effect. The enormously increased Dominion obligations required some continuance of the exceptional revenue sources and led to new financial agreements with most of the provinces; the desirability of retaining certain economic controls to smooth the transition to a peace economy resulted in the maintenance of some domestic rationing in the face of shortages and in the perpetuation of foreign exchange regulations as a consequence of the instability of international trade. Moreover, Canada's part in the preparation of the atomic bomb and the ever-present fear of foreign penetration have tended to encourage the retention of security measures of an unprecedented nature.

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One may summarise the above discussion of the Canadian constitutional system by repeating that it is an interesting and distinctive blending of principles drawn from British and American models. While appearing to rest on a single document like the American, it is actually more like the British in so far as it possesses important flexible and unwritten principles. The system is therefore only partially based on fundamental law; the conventions are equally significant. In general, law regulates the federal system and convention regulates the parliamentary institutions. To the present date, the chief changes have occurred in the political phases of self-government, those concerned with external and internal autonomy, and such changes have required little or no alteration in law or in established institutions. Thus far at least, few alterations have occurred in the formal or legal concepts of the federal system and development has taken place through judicial interpretation rather than by statutory amendment. As national self-dependence has been

extended, there has been a noticeable realisation that the division of authority between Dominion and provincial governments produces definite limitations on the fullest attainment of popular government and ministerial responsibility, for the federal principle is found to prevent the complete execution of political programmes. This is a penalty that is commonly accepted as inevitable in a federal system. Despite all the talk of national unity and national planning, no one has seriously suggested, as yet, the adoption of Dominion parliamentary supremacy of the British type. Nor have Dominion parliamentarians dared to take much advantage of the control over constitutional amendment which at the moment they seem to possess.

#### FOR FURTHER READING:

In addition to the larger standard works of Anson, Bryce, Lowell, Willoughby, etc., there are several smaller studies of importance for purposes of comparison with the British and American Constitutions—e.g., W. I. Jennings, *The Law and the (English) Constitution* (2nd. ed. 1938); A. B. Keith, *British Constitutional Law* (1931); N. L. McBain *The Living (American) Constitution* (1928); and E. S. Corwin, *The (American) Constitution and What It Means Today* (7th ed. 1941). In addition, there is now an admirable comparative treatment of Canadian, British and American systems in J. A. Corry, *Democratic Government and Politics* (1946). See also W. B. Munro, *American Influences on Canadian Government* (1929). The noted work of A. V. Dicey to which reference is made on p. 60 of the text is *The Law of the (English) Constitution* (8th. ed. 1915).

Since the first edition of this present work, an exceptionally comprehensive treatise on the Canadian constitutional system—at least so far as relates to the central government—has been published by R. MacG. Dawson: *The Government of Canada* (1948). The latter has also edited a useful, though somewhat outdated, collection of documents: *Constitutional Issues in Canada (1900-1931)* (1932), Chapter I of which contains selections from important discussions of the constitution. The pertinent information with respect to the amendments to the British North America Act has been brought together by H. McD. Clokie, "Basic Problems of the Canadian Constitutions", *Canadian Journal of Economics and Political Science*, Vol. VIII (1942), pp. 1-32 (reprinted in *Canadian Bar Review*, Vol. XX (1942), pp. 395-429). See also the *Proceedings, Evidence, and Report of the Special Committee on the British North America Act* (of the Dominion House of Commons, 1935). A lawyer's view of law and convention is to be found in F. C. Cronkite, "Political Theories and Conventions: their incorporation into the Positive Law," *Canadian Journal of Economics and Political Science*, Vol. V (1939), pp. 403-16. For the apparent conflict of law and convention see H. McD. Clokie, "Judicial Review and Federalism in the Canadian Constitution," *Canadian Journal of Economics and Political Science*, Vol. VIII (1942),

pp. 537-56, and "Basic Problems of the Constitution; iii who interprets the constitution?" *Canadian Bar Review*, Vol. XX, (1942), pp. 817-40. The Canadian author to whom reference is made on p. 60 is D. A. O'Sullivan, *The Canadian Constitution* (1880).

The impact of war powers on various aspects of the constitutional system have been the subject of numerous studies made during the course of the war. The extent of the crisis can be gathered from the bibliographical list: S. I. Stuart, "Statutes, Orders, and Official Statements relating to Canadian War-time Economic Controls," *Canadian Journal of Economics and Political Science*, Vol. XIII (1947), pp. 99-114. The general constitutional position respecting civil rights is canvassed in H. McD. Clokie, "The Preservation of Civil Liberties," *Loc. cit.*, pp. 208-32, and the legal aspects are a recurrent theme in articles in the *Canadian Bar Review* for 1945 and 1946. For the special security measures and their operation, see L. H. Phillips, "Canada's Internal Security," *Loc. cit.*, Vol. XII (1946), pp. 18-29. Other works on Canadian constitutional law will be found at the end of Chapter VII.



## CHAPTER IV

### POLITICAL PARTIES AND THE ELECTORATE

#### *The Major Parties*

In a democratic constitutional system the driving mechanism is party. As the piston transmits the activating power of a combustible vapour in a gas-engine, so parties in a democratic machine serve as the agency through which the force of public opinion is directed into political action. Partisanship itself is not the original force; it is the device by which the numerous constituents of public will—special interests, private benefits, and common ideals,—are transformed into co-ordinated activity and made effective in government. In a parliamentary system the somewhat elusive public will is translated into action through the partisanship of elected representatives who make laws, levy taxes, and support or oppose the ministers who conduct the administration. Political parties are thus of prime importance in the operation of a democratic government. It is essential to examine the nature of the Canadian party system because it explains much that is significant in the process of government.

There are two great political parties in Canada and, at the moment, three minor ones. The large parties, Conservatives and Liberals, date back to Confederation; the minor ones, the Co-operative Commonwealth Federation, the Social Credit party and the *Union Nationale* are products of the past ten years. The influence exerted by these parties differs at the different levels of local, provincial and Dominion government. For the moment, however, it is advisable to concentrate upon the parties in the Dominion arena of politics. In the national field two parties have practically dominated Canadian politics since 1867. Even in the past twenty years, when the major parties have been most

notably challenged, it will be observed that in the six elections since 1925 the two major parties have together won at least four-fifths of the seats of the House of Commons. From 1867 to 1917 this predominance of the two parties was even more distinctive; then, in the election of the latter year (1917) a split in the Liberal party and the sudden appearance thereafter of a new agrarian movement threatened the supremacy of the older parties. But although the last twenty years has been marked by a continuance of minor groups and independent movements, the two old parties have hitherto retained their dominant position. The circumstances under which minor parties and groupings arise may thus be postponed until after discussion of the major parties which have provided the chief activity in Canadian politics.

As elsewhere throughout the world, one must not take too seriously the names of the parties as indicating either their policies or the source of their support. It is only by a considerable stretch of the imagination that the Liberal and Conservative parties can be regarded as liberal or conservative in the usual political meaning of these terms. The most that can be said is that these designations may reveal feeble trends or aspirations in some quarters. The Conservative party has been the one which, as a last resort, a conservatively-minded person might be likely to support if there were no other influences operating; the Liberal party has been perhaps the least offensive to a liberal person. But this is true only in a very general and limited sense—in the same way, for instance, that in the United States a liberal might (not necessarily would) support the Democratic party or a conservative support the Republican party. Other considerations, such as family, race, economic and social status, even geography, enter into the picture of partisanship to such a degree that they cut across any political loyalties or groupings founded directly on coherent policies or principles. Liberals, for example, often claim to be the party of “nationalism”, while Conservatives are regarded as “imperialists” or those most definite in their attachment to Great Britain. Yet it was a

Conservative prime minister who actually carried Canada farthest in attaining international recognition at Versailles in 1919 with separate membership in the League of Nations and World Court. Nor can it be said that there is a real or basic distinction between the parties on such economic matters as the tariff policy. The Liberals are little less protectionist than the conservatives in practice, though it is true that Liberals give more lip-service to the liberal principle of free trade. Furthermore, both parties profess, on occasion, to be reform parties. During the great depression of the 1930's, the Roosevelt New Deal found some imitation in the "New Deal" of the Conservative government of the day (1930-35). Much of the proposed legislation was blocked on federal grounds by judicial opinion, but one measure at least—unemployment insurance—was finally carried into effect with a constitutional amendment in 1940 under a Liberal *régime*. At the Conservative Convention of December, 1942, a considerable effort was made to draft a platform to the "left" of the Liberal policy and this was accompanied by the alteration of the party name to "Progressive Conservative." It is probably quite fair to say that both parties experience the same difficulties in attempting to be reformist parties as are experienced by the Democrats and Republicans in the United States. For a time it appeared that there would be some competition between Liberals and Conservatives to give the appearance of being the true social-reforming party, though an outsider would not hesitate to describe them both as moderately conservative and to assert that any competition for reform comes by popular necessity rather than from conviction.

Although the major parties are not definitely differentiated by consistent divergence of political principles, it need not be thought that these parties are so completely similar as to make political rivalry meaningless—that as "empty bottles with different labels" they are quite useless—, as has sometimes been suggested. Even if the parties have little distinctive character in theory, it would still be true that they serve a useful purpose in democratic government. Political parties perform two specific

functions: they present the voter with leaders and candidates for election and they focus attention on specific aspects of public affairs on which the public should express an opinion at any given election. The continuance of two or more parties, whether they be similar in general policies or not, is thus a matter of utmost importance for the operation of parliamentary government. These functions of parties were fully understood in 1867 as a basis for government in the English tradition. It was agreed then that the Canadian parliamentary system would require a two-fold alignment of politicians from which the Government and the "alternative government" should be drawn. So whether the two-party system was necessary, desirable, or even appropriate to the new country was hardly debated; it was the expectation of the constitution makers and no one considered that the English lines of division were incapable of transference to Canada. That the names "Conservative" and "Liberal" were adopted reveals this inherited tradition, though it is clear that they did not spring from a distinctive Canadian cleavage between conservatives and liberals.

At the same time it must be recognised that this political pattern has persisted in Canada because it has, to the present at least, provided a framework within which the various political forces in the country could seek to effect their ends. Artificial as the Conservative-Liberal division may seem when viewed in the light of the English names of the parties, the fact is that the two parties have represented the distinctive political divisions in the country. These divisions have not been grounded on consistent or theoretical principles of liberalism or conservatism, for these had little appeal in a new and developing country which has national aspirations. In the course of seventy years' development it need hardly be said that the basis of the party system has departed radically from its English model in proportion as it has been adapted to and adjusted to the Canadian environment.

The nature of the two major parties was largely set by the practical issues and circumstances of Confederation. The pro-

cess of creating the Dominion was accompanied by electoral campaigns in each of the federating colonies or provinces, and in each of them there was an immediate division of politicians into two groups—those favouring and those opposed to the new Confederation. When a Dominion cabinet was installed and the first parliament assembled, it was inevitable that the pro-Confederation groups from the different provinces should amalgamate to retain control of the new government. It was also inevitable that the anti-Confederation groups should continue to oppose them. The Canadian parallel with the American division into Federalists and Anti-Federalists bears considerable investigation. The forces driving each colony into Confederation were necessarily different in the several regions and the Confederation party was consequently a strange medley of provincialists who agreed on one thing alone—the necessity of compromise to effect the union. In the former “United Canada,” the dominant part of the Dominion, Confederation had been carried through by the happy but transient coalition of English Tories, radicals or Grits, and conservative French *Bleus*. Partly for personal reasons, the complete coalition did not outlive Confederation. Some Grits under Brown withdrew immediately but Macdonald, who had been the directing and driving force and was named as first prime minister, succeeded in retaining a coalition of Tories, *Bleus*, and pro-Confederationists from other provinces. This wide-flung coalition continued with the earlier name of Liberal-Conservative party, and, despite numerous changes of title, persists today as the historic Conservative party. Dominated for a quarter of a century by an exceedingly astute leader and held together by the appeal of office, this party remained in control of the new government for its first thirty years (1867-1896) with but one interruption (1873-78). The opposition, on the other hand, had a more precarious existence, for the grounds of anti-Confederation sentiment differed in each province and proved a disruptive rather than a cohesive force. Without a constructive programme, and lacking a colourful and inspiring leader to hold the dissident groups together, it took

years for the opposition of Ontario Grits, the French *Rouges* and the Maritime critics of Confederation to be welded into a united front as a reliable "alternative government". Whereas the Conservatives were firmly entrenched with patronage and spoils of office, and could justify their existence on the positive ground of making a nation and developing the country commercially and industrially, the Liberals were forced into the position of defending provincial autonomy and criticising the Conservative "National policy". Opposition leaders, like Mowat of Ontario, found greater security in confining their activities to the sphere of provincial politics. It was not until after Laurier was chosen leader of the Liberals in 1887 and the Conservatives were deprived of Macdonald's direction (1891) that the Liberals found a real opportunity to win control of the country, as they did in 1896.

Artificial as the Conservative *versus* Liberal contest may appear when viewed in the light of the English names of the parties, the fact is that the forces that were organised into the two camps did represent differences of interest and opinion as to the future of the country. Quite apart from the original personal rivalries of the early politicians—such as of Macdonald, Brown, and Howe,—, the early cleavage of Confederationists and anti-Confederationists inevitably grew into a dispute over the use to be made of the new national government. Once the general form of the federal union was firmly established and the concept of fostering a Canadian nation agreed upon, it became increasingly difficult for English liberal or conservative principles to be applied. Almost everyone has endorsed the policy of protecting infant industries and almost everyone has been prepared to invoke state intervention for the development of the country's resources. The political controversy has centred largely on the question of protection for whom and of development for whose benefit. To a large extent therefore Canadian parties have been divided in the nature of the appeals to certain groups and interests who may benefit by different lines of political action in the exploitation of the new country's resources.

From its foundation the Dominion of Canada has been divided socially and economically into great regions, each of which is diversely affected by any given course of government policy and enterprise. To a considerable degree, therefore, Canadian politics displays some of the characteristics of American "sectionalism". No single region, however, has been able to dominate Dominion policy; every successful political leader has found himself forced to seek support from at least two or more basic regions. Thus Macdonald founded his Conservative party on support of the older settled portions of Ontario, the urban-led and Church-dominated French of Quebec, and the mercantile and investing classes of the maritime provinces, all of whom could unite in an effort to make the St. Lawrence valley the avenue of transportation and railway development. The Liberals, on the other hand, commenced as an opposition of western Ontario frontiersmen, Quebec *Rouges* (rebels against the Church), and the more provincially-minded residents of the maritime provinces, all of whom saw with bitterness the national government used for commercial exploitation at the expense of the agriculturalists' need for external markets for their produce and freer access to cheap imported manufactures.

As the Conservatives were first in the field in comprehensive organisation, it is not remarkable that the first thirty years of the Dominion's political history was the record of the Conservative party's control centred on eastern Ontario and conservative Quebec. In the course of time, however, there has been both a significant alteration in the political weight of the sections which support these parties. While the influence of the maritime region has declined relatively, the opening of the west to new agricultural settlers not only enormously increased the agrarian vote but also tended to strengthen the Liberals. Accompanying this change, there has also occurred a prodigious revolution in the nature of the partisan support accorded by some of the regions. The diminution of *Rouge* anti-clericalism made possible their wider appeal to the French, and when Laurier, a former *Rouge* who had made his peace with the ecclesiastical hierarchy,

became national leader of the Liberals in 1887, the former Conservative hold on Quebec was definitely challenged. After 1896, the core of Liberal support was found in the combination of western farmer and French Quebec, an alliance which has proved almost unbeatable when aided by the anti-centralising forces in other provinces. For this reason the story of the past forty-five years has been one of the Liberal party's success (and failure) in maintaining the union of Quebec and the West. Only on two occasions since then have the Conservatives beaten the Liberals in a straight two-party fight. The first time was in 1911 when the Liberal reciprocity policy was defeated by a combination of "imperialist" and "nationalist" antipathy to what was described as "Americanisation"; the second upset occurred in 1930 when the onslaught of the depression, with its disastrous effects on western agriculture, enabled the Conservatives to break the Liberal hold on the prairie region.

The fact that a party, to be successful, must draw its support from two or more regions accounts for the opportunism and lack of principles in the Canadian parties. Each party is tempted to appeal to or cater to the dominant interests of the two or three primary areas where voters may be found. A party thus gives the appearance of being an agglomeration of self-seeking interests, even though these may in fact be apparently irreconcilable in theory. No party can thus afford to rely too much on principles; both parties speak with two or more voices, according as their local audiences differ. Frequently, of course, the parties are led into competition in bidding for the support of a particular region. A clear example of this is found in the cultivation of "farmer" support in recent years. In the first years of the recent war, the Liberal government set a basic price for wheat at 70c a bushel, later raised to 90c. Thereupon the Conservative party at its convention in 1942 inserted in its programme a promise of \$1.20 a bushel (a price since exceeded by government regulation). On the other hand, it may happen that a party admits it has little or no chance in a given region and therefore tends to omit serious consideration of that section. For example,



the Conservatives have recognised that the French have been alienated since 1917 (when the conscription issue practically destroyed the party's future support in Quebec) and so the party has since remained chiefly a non-French grouping. This in itself produces a curious result. The French are the most truly conservative element in Canada and should normally support a conservative party; but as the Conservative party is considered to be anti-French, this conservative block has been largely thrown into the Liberal fold. Until 1891 the Conservatives retained a majority of Quebec seats; since 1917 they have only once elected more than five members—the one exception being 1930 when 25 were returned. The consequence is that the Liberal party is weighted down with a powerful non-liberal body of Quebec members. Indeed, if farmers are also taken as being essentially conservative individualists—as is elsewhere the opinion—the combination of French and farmer support would make the Liberals one of the most conservative parties in the world. This is not to say, of course, that the Conservative party is therefore freed from conservatism, for it has been devoted to conserving other interests, particularly industrial and financial—as well as attempting to direct its programme to win the western farmers. At the 1942 convention, however, an effort was made to give the party a more progressive tinge not only in name but also by endorsement of certain types of social security policies. But, as was remarked earlier, it is as difficult for the two major Canadian parties to be other than conservative as it is for the two American parties which are similarly founded on sectional interests.

There is frequent discussion of the capacity of the Liberal and Conservative parties to retain their position of dominance in Canadian politics. Before proceeding to describe the factors tending to displace or disrupt the old parties, it is proper to record that in the Dominion general elections of 1945 and 1949, they again demonstrated their continued pre-eminence. The danger did not come, as some thought it would in the first war, from loss of party individuality in a wartime coalition; for although provin-

Election	Party	Vote	Members elected	Que.	Ont.	N.S.	N.B.	P.E.I.	Man.	Sask.	Alta.	B.C.	Yukon
1925	Liberals	1,266,534	101	60	12	3	1	2	1	15	4	3	0
	Conservatives	1,467,596	117	4	68	11	10	2	7	0	3	10	1
	Progs., U.F.A.	282,599	25	1	2	0	0	0	7	6	9	1	0
	Inds., Labour, etc.	140,842	3	0	0	0	0	0	2	0	0	0	0
	Total	3,157,571	245	65	82	14	11	4	17	21	16	14	1
1926	Liberals	1,421,804	118	60	25	2	4	3	4	16	3	1	0
	Conservatives	1,504,855	91	4	53	12	7	1	0	0	1	12	1
	Progs., U.F.A.	261,520	31	0	4	0	0	0	11	5	11	0	0
	Inds., Labour, etc.	68,429	5	1	0	0	0	0	2	0	1	1	0
	Total	3,256,608	245	65	82	14	11	4	17	21	16	14	1
1930	Liberals	1,714,860	87	39	22	4	1	1	1	11	3	5	0
	Conservatives	1,909,955	138	25	59	10	10	3	11	8	4	7	1
	Progs., U.F.A.	173,838	15	1	1	0	0	0	3	2	9	0	0
	Inds., Labour, etc.	90,342	5	1	0	0	0	0	2	0	0	2	0
	Total	3,888,995	245	65	82	14	11	4	17	21	16	14	1
1935	Liberals	2,060,894	173	55	56	12	9	4	14	16	1	6	0
	Conservatives	1,311,459	40	5	25	0	1	0	1	1	1	5	1
	C.C.F.	390,860	7	0	0	0	0	0	2	2	0	3	0
	Social Credit	182,767	17	0	0	0	0	0	0	2	15	0	0
	Reconstruction, etc.	460,878	8	5	1	0	0	0	0	0	0	2	0
1940	Total	4,406,854	245	65	82	12	10	4	17	21	17	16	1
	Liberals	2,536,514	181	61	57	10	5	4	15	12	7	10	0
	Conservatives	1,416,257	39	0	25	1	5	0	1	2	0	4	1
	C.C.F.	393,230	8	0	0	1	0	0	0	5	0	1	0
	Social Credit	123,443	10	0	0	0	0	0	0	0	10	0	0
1945	Others	151,116	5	4	0	0	0	0	0	2	0	1	0
	Total	4,620,260	245	65	82	12	10	4	17	21	17	16	1
	Liberals	2,170,625	119	46	35	9	7	3	10	2	2	5	0
	Prog. Cons.	1,455,453	65	1	47	2	3	1	2	1	2	5	1
	C.C.F.	822,661	28	0	0	0	1	0	5	18	0	4	0
1949	Social Credit	214,998	13	0	0	0	0	0	0	0	13	0	0
	Others	582,393	20	18	0	0	0	0	0	0	0	2	0
	Total	5,446,130	245	65	82	12	10	4	17	21	17	16	1
	Liberals	2,936,029	186	66	55	10	7	3	12	14	5	11	1
	Prog. Cons.	1,742,234	44	2	25	2	2	1	3	5	2	3	0
1954	C.C.F.	790,322	13	0	1	1	0	0	3	0	0	3	0
	Social Credit	139,801	10	0	0	0	0	0	0	0	10	0	0
	Others	257,921	9	5	2	0	1	0	0	0	0	1	0
	Total	5,856,307	262	73	83	13	10	4	16	20	17	18	1
													Nfld.

\*All figures are unofficial; they are based chiefly on those compiled and published in the *Canadian Press* for the respective years. The fact that there are no official figures for the party vote explains the divergence from the official report of total votes cast, p. 109

cial coalitions came into existence in British Columbia and Manitoba, the Dominion Liberals successfully crushed this proposal in national affairs at the 1940 election when they reduced the Conservatives to the role of angry but impotent critics and won the right to conduct the war alone. The dangers confronting the old parties were of two varieties: the standard prospect of regional revolt such as will be described in the next section, and special imponderables of the moment, such as the unpredictable course of the "soldier vote" which would be cast by young servicemen and women often far from the scenes of political campaigning, the possible unbalancing of sectional influence as a result of population shifts to industrial centres during the prodigious war development, and grave doubt as to what political form the inevitable reaction from war regimentation would take. To a considerable degree, therefore, the situation was clarified by the bitterly contested election that was held within a few weeks of the cessation of hostilities in Europe. Liberal and Conservative candidates received 41% and 28% respectively of the popular vote, while the chief new rival, the Cooperative Commonwealth Federation, received only 16% (though it secured 32% of the service vote). A Liberal majority was again assured, reduced, it is true, to 119 official members but with the prospect of actual support from a dozen Quebec independents. The Progressive Conservatives, less under-represented than before, were again returned as the official opposition with 65 seats.

The traditional predominance of the two major political parties was further confirmed by the general election of 1949. Indeed, the old situation, though not completely restored, was sufficiently assured that a considerable difference in the tone of the two elections was observable. In the earlier election both the old parties felt they were on the defensive against rising tides of insurgence, and their campaigns were fiercely directed not only against each other but also against newcomers. In the recent election, however, Liberals knew that their primary

antagonists were the Conservatives and Conservatives were chiefly concerned to present themselves as the alternative government to the Liberal, neither of them paying much attention to their supernumerary competitors except in special localities. Throughout the 1945 contest the issue was in great doubt and its outcome revealed the profound instability. The C.C.F. more than doubled its popular support and its parliamentary representation was more than tripled; Social Credit also increased its vote and representation; while an unusual number of other groups and independents polled more than half a million votes and secured some 20 seats (chiefly in Quebec). The Liberal Government was then returned with a plurality, but was just below a parliamentary majority, though fortunately its opponents never fully combined against it. In the 1949 election, however, the contest was largely conducted as a two-party one, and the two major parties continued to be the only ones carrying seats in nine or more provinces. It had become clear, in fact, that no insurgent group was any closer to displacing an older party. So far as the two main parties were concerned, the campaign was remarkable for the calm confidence of the Liberals, a confidence that was justified by their overwhelming victory. The conservatives had not only failed to gather any new Quebec support, but lost almost half of their Ontario seats. The result was that with 50% of the vote the Liberals won 189 seats (61% of the House), while the Conservatives with 30% of the vote were reduced to 41 (15%).

### *Minor Parties and Provincialism*

The two major parties have not been founded on theoretical principles or policies because they have been based on the attempt to co-ordinate support from different regions. In this respect it may be said that they have served to "nationalise" politics by forcing the dominant interests in each region to co-operate on a national scale instead of each pursuing exclusively its own benefits. Though the parties have lost much in the way

of principle, they have gained in "national" vision. Yet there is always the possibility that a sectional interest may find itself so divergent from the rest of the country, and feel itself so neglected by the party which it normally supports, that it may part company with the national party. In other words a local party of revolt or insurgence may spring up to press the claims of the special region. This possibility is constantly present in a federal system, for provincial governments provide the machinery by which regionalism may become not merely vocal but to some degree effective. In its most extreme form, of course, this revolt may even take the form of a demand for secession from the Dominion and such movements have not been unknown in the maritime provinces, on the prairies, and in Quebec.

Normally, of course, this disruption is held in check by conciliatory action of the major parties as federations of sectional interests. For the first fifty years of the Dominion this was essentially the case; but since the war of 1914-18, a pronounced disintegration has been manifest. Two contributory factors may be suggested for this. In the first place, regionalist revolts are most likely to occur in the midst of or as an aftermath to a particularly intensive period of political unification or national control, such as nowadays occurs in wartime. In the second place, the party which is most expressive of provincialism—the Liberal party—has come to play a predominant role in the past half-century when the centralising and "national unity" tendencies have been most pronounced. The Liberal party has thus been torn between the desire to appease provincial interests and the necessity of assisting the cumulative centralisation. Inevitably, some of its constituent elements have lost confidence in the party's representative character as the proper outlet for their sectional aims. It is a fact that the breaks in the two-party system have occurred within the Liberal party and that this began with the rise of the Nationalist movement in Quebec after 1911.

The most evident, though relatively transitory, breach in the Liberal party was the product of French sentiment over the conduct of the first war. As a result of the "conscription" election

in 1917, a Union Government of Conservatives and dissident Liberals was formed. The Quebec Liberals then constituted the core of the party of Opposition. At the close of the war this cleavage was healed when the coalition government broke up and the Liberals were united again under the leadership of Mr. W. L. Mackenzie King, one of the few eminent English-speaking Liberals who had not participated in or supported the Union Cabinet. The Liberal "Unionists" were completely reabsorbed in the Liberal party by the election of 1921. The grounds of French intransigence nevertheless remained, and have persisted as the dominant feature in Quebec politics. Dissatisfaction with the Liberal party in Quebec was revealed in 1936 when a new French nationalist and conservative party (*Union Nationale*) captured the provincial legislature and government in 1936 and displaced the Liberal régime which had been in control for a generation or more. When the second world war broke out in 1939, the danger that such an insurgent movement offered to national unity was enormously increased. The provincial premier, M. Duplessis, dissolved the Quebec legislature and campaigned against active participation in the war which was painted both as imperialistic and as carrying with it "assimilation", the worst of all evils in the eyes of French nationalists. So seriously was this challenge viewed by the Dominion (Liberal) Government, that, contrary to custom, the French ministers in the Dominion Government entered into the provincial election to support the orthodox provincial Liberal party led by M. Godbout.

The Liberals were successful in this provincial election of late 1939 and they also carried the province in the Dominion election of March 1940. In these elections, it may be noted, the Liberal leaders found it necessary to give a pledge that conscription for overseas service would not be imposed. After two more years of war the Government decided to seek release from this pledge and undertook to secure it by a plebiscite. The introduction of legislation early in 1942 to authorise holding a plebiscite was the occasion for a new Quebec agitation. Eleven

Quebec Liberals voted against the government on the bill. When the plebiscite was held, the opposition of the province of Quebec to the Liberal party's policy was definitely revealed. The "Yes" vote to release the Government from its pledge was 2,626,010; the "No" vote was 1,497,724 of which 948,311 was cast in Quebec. Later, a government bill to remove the restriction on the use of conscribed soldiers outside Canada was opposed by some 45 French members. One minister, M. Cardin, resigned from the Cabinet. The Liberal party in parliament, however, was not split because the prime minister did not make party unity a condition for his continued leadership. The refusal of the government to put compulsory overseas military service into operation until the last month of 1944 prevented any serious continued revolt within the party, though half a dozen Quebec members commenced the formation of two or three dissident French parties—of which the *Bloc Populaire* seemed most significant. This, however, proved to be superficial. On August 8, 1944, the Quebec Liberal government of M. Godbout was defeated at a provincial election, but the victors were not the *Bloc Populaire* but the *Union Nationale* of M. Duplessis, a less intransigent and more conservative party. The *Union Nationale* won a majority of 46 seats (with 37% of the votes), the Liberals 37 seats (with about 40% of the votes), the *Bloc Populaire* only 4 seats (despite 23% of the votes), and the C.C.F. one seat (with 2% of the votes).

The great question of Quebec's future party allegiance was settled at the Dominion election of 1945. On the face of it, the French were expected to resent their "betrayal" by the Dominion government when it reversed its former policy after the Cabinet crisis of November 1944 and proceeded to send non-volunteers overseas, a policy which occasioned riots in some Quebec cities. But at the Dominion election it was found that Liberal power was not broken, for they won 46 seats in Quebec with a popular vote almost ten times as large as that of the Progressive Conservatives who only secured one seat. The great Liberal victory of 1945 left no doubt that Quebec was securely

in the party fold for Dominion purposes. In 1949, too, the failure of the Conservatives to secure effective support from the conservative *Union Nationale* is quite significant. It means that the latter party is content to remain a local force. The people of Quebec are not the first to discover that under a federal system a provincial electorate may find it advantageous to offset support of a national party by retaining an opposition provincial party uncontaminated by other ties.

It was not only among French supporters of the Liberal party that revolt occurred. During the first world war the agrarian elements felt increasingly the inadequacy of the consideration shown them. A succession of provincial elections between 1919 and 1923 brought into office insurgent parties variously called United Farmers and Progressives in Ontario and the prairie provinces. In 1920 a national Progressive party was organised at Winnipeg and captured 65 Dominion seats in 1921. Here again however the process of reabsorption into the orthodox party gradually occurred, although it was not completely effected till after 1930, when 15 divided insurgents were all that were left in Parliament. This did not prevent the retention of power by the Progressives of Manitoba until 1942 when a wartime coalition was formed (without an election). Yet it must be recorded that the Manitoba Progressives and the Dominion Liberals in that province were largely identical even though the provincial leader, Mr. Bracken, rarely appeared as an associate of the Liberals who accepted Mr. King's leadership in national matters. It was perhaps not surprising that Mr. Bracken was chosen leader of the Dominion Conservatives in 1942 (at which time the name Progressive Conservative was adopted) in order that this party might make a decided effort to attract the western region to their programme.

The catastrophic effect of the great depression 1930's on western agriculture might have been expected to produce a continuance or at least a renewal of revolt by the farmers. The fact that the organised farmers (as United Grain Growers,



members of co-operative "wheat pools", etc.) had gradually returned to the Liberal fold left the field open to another movement. A characteristic and separate revolt did originate in Alberta, where Mr. Aberhart, a convert to Major Douglas' social credit theories, swept into power in 1935. Later, the same year, too, 17 Social Credit members were elected to the Dominion Parliament—all but two of them from Alberta, and the remainder from the neighbouring province of Saskatchewan. Social credit has retained control of Alberta though it has lost its support elsewhere. In 1940—six weeks before the Dominion election of that year—it was noteworthy that the Dominion Liberal leaders did not care or dare to enter the provincial contest in the way that they had done three months earlier in Quebec. Yet at the national election only 17 Social Creditors were elected—all from Alberta. In 1941 efforts were made to establish a national organization, first under the name New Democracy and later again as Social Credit. After Mr. Aberhart's death in 1943, the new premier, Mr. Manning, showed that Social Credit was still strongly entrenched in the province. At a provincial election on August 8, 1944, the party won 51 seats (with 50% of the votes) as against 3 independents (polling 15%), 2 C.C.F. (with 25%), and one Veterans' candidate. The purely provincial aspect of the party was revealed in the Dominion election of 1945 when Social Credit carried 13 of the 17 seats in Alberta but none elsewhere, though its candidates in Quebec polled one-third of the total national Social Credit vote. The Social Credit doctrine provides a theoretical foundation for such schemes as the Californian "Townsend Plan", and by its emphasis on the role of credit, justifies the popular agrarian desire to extinguish farmer indebtedness. In its practice, in provincial government, it has become a support for "self-sufficiency" in the limited area of Alberta.

In all these cases of insurrection against the major parties it will be observed that the nature of the construction of Canadian parties is heavily weighted against minor parties which are essentially sectional in their appeal. A regional or special party

may succeed in capturing and even holding a provincial government, but can have little future as a power in Dominion politics. No party can hope to gain control of the Dominion government unless it embraces representation of two or more regions. A regional party must necessarily abandon hope of attempting the ultimate goal of all parties—the formation of a Dominion ministry. As a consequence of this, the leaders of sectional parties cut themselves off from office in Dominion field. The tendency is thus for the ambitious leaders of sectional groups to remain in the provincial arena in which they may hope to gain office and power. A regional party therefore tends to be a provincial party and its Dominion aspect displays an appearance of being merely its department of external affairs, a medium of protest in the Dominion Parliament; it does not play or aim at the role of a claimant for power. This is quite noticeable in the case of Social Credit, which otherwise possesses a doctrine which could be of national importance. It has also been the distinctive feature of the Quebec nationalists.

It must not be thought that these remarks entirely rule out the prospect of a third party rising to power. The major parties have been powerful because they have attempted to combine the dominant interest of diverse regions. The minor parties which have thus far been considered have been cases where the dominant interest of a region has sought an outlet separate from the major parties. All this is in the standard American tradition. But there is one other possibility. A third party might be founded on a combination of certain of the non-dominant interests in several regions. It is not true that all the inhabitants of a region have identical interests. The unity of a "section" is an artificial concept which has been much exploited by propagandists. The most ancient lines of political division are not on sectional or regional lines at all; the economic and social cleavage of class differentiation runs through all sections of the country. It is only in recent years, however, that socialists have attempted to take advantage of the economic cleavage which cuts through all regions of the country and to

construct a national party not based on dominant regional interests.

Two Labour members were elected to the Dominion Parliament in 1921, but no national party was organised until 1932 when some radical elements of the western agrarian movement joined with the urban labour organs of the west to found the Cooperative Commonwealth Federation. The party elected eight members of parliament in 1940 and the number was gradually raised to eleven by later by-elections. This slight parliamentary representation, it may be said, was quite out of proportion to the party vote and popular influence. This is shown by the success met with by the C.C.F. in provincial elections. The most pronounced gain occurred in the Ontario election of 1943 when the C.C.F. was returned as the second largest party, with 34 out of 90 seats. At the end of 1943 the C.C.F. constituted the official opposition party in British Columbia, Saskatchewan, and Manitoba as well as Ontario. In 1944 a Saskatchewan general election resulted in the capture of 47 out of 55 seats, with the result that the first C.C.F. ministry was established in that province. This spectacular success made it appear that another great decline in Liberal influence was imminent—for both Ontario and Saskatchewan had previously possessed Liberal governments—and that the C.C.F. might be the chief beneficiary of its decay. These expectations, however, have not been realised. At a provincial election in Ontario held one week before the Dominion general election of 1945, Mr. Drew's Progressive Conservative ministry inflicted a crushing defeat on both provincial Liberal and C.C.F. parties. The Conservatives received a popular vote almost equal to that of the other two parties together and gained 67 of the seats; the Liberals superseded the C.C.F. as official opposition, for while the Liberals captured only a dozen seats, the C.C.F. was reduced to 6 members and lost its leader as well.

One might expect that a socialistic or proletarian party would have its centre and main strength in the urban industrial communities of Ontario and Quebec. Curiously enough, this has

not hitherto been the case. Although the founder of the party, the late Mr. Woodsworth, represented a city division (Winnipeg North Centre), the party drafted its first programme in 1933 at a convention in a small, non-industrial prairie city, Regina, Saskatchewan. During its first ten years it continuously displayed a western agricultural bias and appeared largely as a party of agrarian discontent, drawing its main support from the farmers' co-operatives. Even in this respect it must be recorded that its foundations did not rest on the most impoverished rural element—tenant farmers or farm labourers—but on the highly individualistic and capitalist-minded farm owners. The greatest effort was made by the C.C.F. in the general election of 1945 to force itself into the forefront as a truly national party by nominating candidates in four-fifths of the constituencies. The highest hopes were entertained that, if they could not displace the Conservatives as the official Opposition (and therefore "alternative government"), they could at least become the decisive factor if neither of the old parties possessed a majority.

The party has as its objective the establishment of "a co-operative commonwealth in Canada wherein useful jobs, social security, social and religious freedom, health, education, good homes, together with the highest possible standard of living, will be enjoyed in the fullest measure by every Canadian." Full employment is to be ensured by converting government-owned war plants to civilian production, by planned housing, slum clearance, and regional planning. It urges the socialisation and democratic control of industry, banks, and other financial institutions. For the farmers it would guarantee prices and promote trade by marketing boards. But despite this comprehensive programme the C.C.F. met with but moderate success. In 1945 it temporarily doubled its membership in the House of Commons, but in 1949 it met with a serious reverse. Despite its aspirations, it cannot pretend to speak with the voice of labour in the industrial centres of the country; it remains essentially a western agrarian party.

The apparent neglect of the eastern industrial worker is largely

the result of American influence. Canadian labour, which is very slightly organised—less than 20% of the wage-earners being members of unions—has followed American lines even to the division between the American Federation of Labour and the Congress of Industrial Organisation. Practically all the international unions are pledged to non-partisanship in politics. The C.C.F. has therefore sought to accomplish the same and hitherto impossible task as the American Socialist party: organisation of a national socialist party without union support. The party has received its chief support from general dissatisfaction with the two major parties; it is only in the last year or two that it has secured official endorsement by some organs of labour activity, such as the Canadian Congress of Labour. Yet it is only through some such action that it can avoid remaining just another regional minor party. This is a particularly difficult problem. The concept of regional interests is deeply rooted in Canadian politics and every ambitious national party tends to adapt its programme to cater to such interests. Then, too, Canadian labour, like American labour, is neither socialistically-minded nor class-conscious. Furthermore, the C.C.F. has to solve the question of how to attract French Catholic voters in the province of Quebec, without whom it is difficult for any party to rule Canada. The French, as a cultural minority, are suspicious of any policy which implies national planning or materialistic standardisation, and, as Catholics, are warned against any socialistic party.

It is too early to say that the C.C.F. is definitely on the wane, though it is clear that even in Saskatchewan, the sole province where it has been in power, popular support has begun to subside as is shown by recent Dominion and provincial elections. The reasons are clear. Lacking organized labour endorsement, its chief strength has come from agrarian unrest. Canadians are not attracted to socialist theory, though they endorse the concept of the welfare state, a concept of which the Liberals have been the chief beneficiaries.

*Party Leadership and Organisation*

A political party is primarily a body of men who agree among themselves that they or their nominees and their leaders ought to govern the country, province or city. In the absence of a political programme as a bond of partisanship, the major Canadian parties have been groupings of politically minded individuals in different sections of the Dominion who agree on one thing—acceptance of the leadership of a particular politician. The chief basis of union within each party has been allegiance to the leader of the party. It is the leader who chooses the chief issues upon which his party is to campaign, and this he often does with little regard to the party platform when there is one. It is the leader's prerogative to give direction to the parliamentary activities of the party, whether the party is in power or is in opposition. The leader's first duty to his party is to create and preserve some semblance of unity among the diverse elements which constitute the party and its adherents. Unity comes before power, as all politicians know, and the maintenance of a "united front" against their opponents is the leader's prime task. Indeed, it may be said that the success of the major parties in retaining their hold on the country in the past has been the consequence of possessing party leaders with the capacity to recruit the aid of the most talented sectional politicians and to pursue lines of policy which satisfy the apparent regional needs of those areas supporting his party. It is therefore regarded as inconceivable that any man can continue within a party unless he gives support and loyalty to the leader of that party. There is, of course, a reciprocal obligation on the party chief to provide sound guidance and assistance for his followers and, when in power, to fortify them with such patronage and benefits as are available.

The dominant position of the party leader in Canadian politics has often been commented on by foreign observers. It is far greater than in Britain where the adherence to party principles or programme competes with loyalty to the leader as a bond of partisanship. It is also greater than in the United

States where party candidates are nominated locally without any obligation to support the national leader of the party. In Canada more than anywhere else it is possible to define a party as being a body of supporters following a given leader. Parliamentary elections are primarily occasions on which the electors choose between party leaders as prospective prime ministers. Each voter knows that he is not so much voting for Candidate X as a member of Parliament as expressing his desire that Candidate X's leader should form the Cabinet. Party leadership has thus become institutionalised. The leader of the most successful party, that is the leader who secures the election of the greatest number of his candidates, becomes Prime Minister and is normally assured the continued support of all his partisans throughout the life of Parliament. His Cabinet, of course, consists of the leading supporters, appointed to office with considerable attention to the geographical or regional and provincial structure of the country. The leader of the defeated party, that is the leader whose candidates are next most numerous, normally becomes the "Leader of the Opposition", a salaried position since 1905. This is very different, it will be seen, from the position in the United States, where a defeated leader generally forfeits his leadership. In Canada, as in Britain, leaders continue in their role through success and adversity until death or resignation. Despite occasional electoral defeats, a leader may thus remain at the head of his party for more than a score of years, as did Sir John Macdonald (leader of the Conservatives from 1867 to 1891), Sir Robert Borden (leader of the Conservatives from 1901 to 1920), Sir Wilfrid Laurier (leader of the Liberals from 1887 to 1917), and Mr. Mackenzie King (leader of the Liberals from 1919 to 1948).

So essential is the leader in Canadian parties that nothing is more disastrous to a party than inability to decide upon and follow a chief. This was demonstrated to the Conservative party at Macdonald's death in 1891, after which a rapid succession of leaders (prime ministers, in fact, since the party was in majority in parliament) contributed to the party's defeat in 1896. It

has also been the undoing of the Conservatives since the retirement of Mr. Bennett in 1938, since which time five or more leaders have been tried without complete satisfaction to the party. In the nature of the system, therefore, the transition from the dominance of one leader to a new one presents the chief threat to party unity. It is interesting to observe the efforts to offset this occasional but inevitable break in party continuity. During the first fifty years of the Dominion, party leaders were chosen by a small inner circle of politicians, a body never larger than the parliamentary caucus with the addition of some defeated or prospective candidates. In the past twenty-five years, however, each party has experimented with larger and more democratically representative conferences. In 1919 Mr. King was elected at the first "convention" summoned for such a purpose. The Conservatives, on the other hand, who were also faced with the selection of new leader left the choice to the retiring prime minister (Sir Robert Borden), who designated Mr. Arthur Meighen. But, whether as a result of the Liberal convention of 1919, its platform, or other factors, the Liberal victory at the 1921 election encouraged the Conservatives to summon a representative convention in 1927 to provide a successor for Mr. Meighen. Three other Conservative conventions have been held (1938, 1942, 1948). On the other hand, the Liberals, under Mr. King's lengthy leadership, were absolved from the necessity of a conference until his retirement in 1948. Opinion now insists that a leader should be selected at a representative convention modelled on American lines. This was demonstrated by the criticism directed against the resumption of leadership by Mr. Meighen on invitation from a semi-caucus gathering of 1941. The opportunity to remedy this mistake was taken after Mr. Meighen was defeated in a by-election when trying to secure re-election to the House of Commons. For the second time Mr. Meighen resigned and left selection of a successor to the convention of December 1942, at which Mr. Bracken was selected. It should be added that this selection did not entirely remove all criticism of the lack of incisiveness in Con-



servative leadership, for Mr. Bracken did not seek to enter Parliament until the general election of 1945 when he failed to lead his party to victory. Accordingly, in 1948, when another election was in prospect and with a new Liberal leader to face, Mr. Bracken withdrew and Mr. Drew, Conservative premier of Ontario, was selected in his place. Not until the party settles down to defined and permanent leadership can it expect success.

Although still infrequent and unpredictable occurrences, the Liberal and Conservative conventions have been somewhat less pretentious and boisterous adaptations of the glamourised American nominating conventions. Much of the same terminology is adopted. There is a key-note speech by the chairman and the same hurried pretence at platform-making before the real business of choosing a new leader is commenced. In general, the characteristic feature of the Canadian convention is that the several hundred delegates hear the rival candidates make a bid for leadership in short speeches. The delegates then vote individually by ballot (not orally by "delegations" as in the United States) and a majority is considered necessary for election. The "band-wagon" effect is usually attained when it becomes apparent that one candidate is winning over his opponents and the election is declared by acclamation. The conference finally concludes with the new leader's speech of acceptance and the platform passes into oblivion, for policy-enunciation is thereafter as much a function of leadership as is the day to day determination of political strategy.

It is noteworthy that neither of the old major political parties ever possessed or has seriously attempted to create an effective permanent national organisation. Although each has an embryonic central office, which springs into frantic activity at election time, these do not perform the functions of the same bodies in the British parties. Nor is there a regular organ of party opinion comparable to the annual British party conferences or the quadrennial American conventions. (The C.C.F., it may be noted, began with annual conferences and since 1938 has held them biennially). The chief representative organ of the

party is the parliamentary caucus, which is composed of the elected members of Parliament. The caucus is chiefly active when a party is in opposition. The establishment of a National Liberal Organisation Committee and of a National Conservative Council has so far proved abortive. Only one representative party conference has been held when no leader was to be elected, and although this one (the Liberal conference of 1893) was highly successful in giving popular support to a caucus-selected leader (Laurier) and in drafting a platform which contributed to victory at the polls in 1896, the experiment has never been repeated.

The reason for the failure to build up a central organisation seems to be in the nature of Canadian parties as founded entirely on the "leadership" principle. Once a leader is selected he becomes both the organ of party opinion and policy and the director of party organisation. As leader he gives public expression to the aims of the party and appoints the chief party organiser to manage all national party business. If he is successful in giving voice to schemes which find common approval among his heterogeneous followers and in picking an organiser capable of managing the diverse elements of the party, he may lead his party to power. If he is unsuccessful the party will disintegrate or drag out an uneasy existence fortified only by the hope of a new and better day and by the possibility of occasional victories in the provinces. In general this gives the national parties a decidedly non-representative or non-democratic colour. The party supporter has little role to play in the organisation except when called upon to cast his vote at infrequent elections. It is probably true that the minor parties have evoked considerable assistance and support from that portion of the public that wants to participate in the discussion of principles, purposes and methods of party government and finds that the major national parties provide no opportunity for this.

Apart from the parliamentary caucus and the occasional convention, party organisation is founded on a provincial basis. To some extent, therefore, a national party gives the appearance of

being a federation of provincial parties which bear a common name and accept the same national leader. This situation is connected with the sectional aspect of Canadian parties, but it is strengthened and institutionalised by the federal system. The provincial party is necessarily most concerned with local matters in the province, and, though it should view them with an eye to Dominion elections, allegiance is distracted because in each province there is also a provincial leader surrounded by his satellites who direct their efforts chiefly to winning power in the province, where patronage and party funds are now chiefly centred. It occasionally happens, therefore, that the provincial party organisation and its leader are in conflict with the avowed purposes and policies of the national party and its leader. Thus, in 1940, Mr. Hepburn, Liberal premier of Ontario, was in open discord with Mr. King, Liberal Prime Minister at Ottawa—a state of party cleavage more frequent in the United States. The unity of the entire Liberal party was then challenged. The Hepburn Liberals in the Ontario legislature joined with the provincial Conservatives in carrying a formal vote of censure on Mr. King, though the Ontario Liberals in the Dominion Parliament met in a special caucus session to dissociate themselves from this provincial revolt. Such a situation is not conducive to public respect for the party system and it evidently destroys any semblance of meaning in the word party. This, apparently, is one of the penalties paid for federalised politics when there is no appropriate political organisation to co-ordinate the entire national party.

In democratic systems political parties have to direct their organisation to securing contact with the voters whose ballots determine political success or failure. Nearly every member of the Canadian public appears to feel an affinity for one party or another and, while many voters pride themselves on independence, most seem to speak of themselves as Liberals, Conservatives, or supporters of the C.C.F. or Social Credit parties. This does not mean, however, that very many are “members” of a party or that they participate in party activities. The infrequency of

elections and the lack of considerable "spoils" removes two influences that operate in the United States, while the lack of coherent political principles—except in the newer parties—makes it more difficult to enlist popular participation such as is found in Britain. The Liberals have been most successful in maintaining a permanent machinery for dealing with the more active party members. In 1932 a National Liberal Federation was formed and, under the direction of the party leaders a manager (as secretary or president) conducts the party propaganda and supervises local associations. The Dominion Conservative Association established in 1924, was quite moribund until Mr. Bracken undertook to instil new vigour in it in 1943. The purpose, of course, of all such organisation is to maintain interest, preserve support and extend the influence of the national party throughout the entire country. In this respect the party goal is not only to work through provincial associations but to found an active group in each Dominion constituency. This is a difficult task for there are large areas where no active partisans can expect to meet with success and there are regions—such as Quebec—where any intervention of national party guidance is bitterly resented by members of parliament and by the local populace.

The ultimate test of party organisation comes in electoral contests. When an election is felt to be approaching the party machinery commences to hum from top to bottom. The leader enunciates the issues upon which he proposes to make his fight; his manager speeds the collection of party funds and seeks to co-ordinate candidates' campaigns with the national effort. The usually quiescent local branches or associations suddenly swing into activity. Party officials and workers appear as if by magic to guide the actions of the constituency parties. In the best usage—not necessarily adhered to—the party adherents in each polling district are summoned to a meeting at which delegates are elected to a constituency conference where a candidate is chosen to "run" for the party in that riding or division. As party membership is a somewhat nebulous matter for the public generally, there is a tendency for the small group of politically-

minded or interested politicians to manipulate these gatherings. But although this is true—and is widely resented—there has never been a serious demand in Canada for the legal regulation of the nominating procedure such as occurred in the United States when the direct primary was introduced at the beginning of this century. There are several reasons for this public indifference. With the exception of one or two cities, there is little feeling that “boss rule” exists to any great degree. Patronage and spoils have never attained the same significance in Canadian life that they have in the United States. Moreover, it is rare for one party organisation to link together civic or local, provincial and Dominion elections in such a close fashion as occurs south of the border.


### *The Elector and His Vote*

Elections are the official opportunities provided in a democracy for recording public will on political matters. There are two main ways in which the public can participate directly in government—one is by electing their rulers, the other by approving or disapproving laws and policies. The former is usually designated “representative government”, the latter, when separately provided for, is generally termed “direct democracy” and is effected through the initiative and referendum. Direct democracy in this sense is practically unknown in Canada (as in Britain also). It is not even used in the passage or approval of constitutional amendments, which may perhaps be regarded as its most admirable function. Advisory or permissive plebiscites have been used twice nationally: once in 1898 when the electors were consulted respecting liquor prohibition, and again in 1942 when the issue was release of the government from pledges against conscription for overseas service. Popular votes are also taken in some provinces under “local option” laws regulating the sale of alcoholic beverages. But in general the voters’ participation in government is practically confined to the election of representatives, and the endorsement of policies is thus combined with the selection of legislators. The constitutional theory of

## FORM OF BALLOT PAPER.

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<b>3</b>	<b>HONOURABLE JOHN ROBERT SMITH,</b> Cornwall, Ont., Minister of Public Works.

*Front*

N <sup>o</sup> 12778	Space for consecutive number gives to voter opposite his name in Poll Book.	N <sup>o</sup> 12778	Space for initials of D.R.O.		POLLING DAY: September 14th, 1935. JAMES BROWN, Printer, 200 Slater Street, Ottawa, Ont.

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parliamentary supremacy implies that the legislature is the repository of public authority. Accordingly, in electing representatives, the voter has to express a double choice in a single action—designation of the politicians who will constitute the legislature as well as indication of approval of the policies in dispute at the moment of the election. As already explained, this is where the parties play their distinctive role in presenting candidates who are agreed in following a common leader.

No legal recognition is given in Canada to the fact that the voters are actually called upon to express a choice between party policies or between party candidates<sup>1</sup>. It is assumed that candidates have publicly advertised their party affiliations and that the voters are fully informed on these matters. Indeed, although "independent" candidates are not unknown, they are relatively few in number and are rarely elected. The whole parliamentary system is understood to rest on the fact that candidates are actually sponsored by political parties and that in casting his ballot the voter is displaying a party preference even more than choosing between individual men. In practice, then, the right to vote for representatives takes the form of a right to choose between the nominees of the different parties—with the occasional opportunity of voting for an independent candidate and the ever-present option of abstaining from any choice at all, as do 25% to 30% of the qualified electors. These latter alternatives, it need hardly be said, are more in the nature of negative safety-valves than of constructive or positive modes of self-government.

The attention of the public, when it can take part in politics, is focussed on the contest between political parties. It is for this reason that particular attention has to be paid to the nature and objectives of the parties. But it is nevertheless true that the last word remains with the electorate. The existence of free elections, that is the capacity of the voter to choose between rival sets of candidates for political office, remains the distinguish-

<sup>1</sup>Except in Alberta where, in the 1944 provincial election, the candidate's party was entered on the ballot in place of his occupation.

ing feature of all truly democratic systems. No democracy can be better than its parties, but election-day gives the Demos its chance of registering its verdict on the parties it criticises. Parties, in fact, are no better and no worse than the public deserves. The ballot, especially the secret ballot, is the symbol and agency of popular sovereignty. It is now necessary to ask who may vote, and in what fashion elections take place.

First, it must be observed that in a country possessing both local self-government and federalism the election of representatives is required for the government at three different levels—local, provincial and Dominion. In the very nature of things therefore the number of elective offices is greater than in Britain where no provincial governments exist. On the other hand, it must be remembered that, since only legislators are elected, the number of posts to be filled by the electors is infinitely less in Canada than in the United States where an enormous number of executive and judicial officials are also elected. The characteristic Canadian election is one in which the voter has to express his choice for one person to represent an area in a legislative body. The Dominion elections are, of course, those of greatest national importance. On these rare occasions one member of the House of Commons is elected from each constituency (with the exception of two constituencies which for historical and constitutional reasons have two members each: Halifax, N.S. and Queens, P.E.I.<sup>1</sup>). General elections, i.e., those held to provide a completely new House of Commons, take place under Dominion law at irregular intervals not more than five years apart. Vacancies in the House of Commons due to death, resignation, etc., are filled at special by-elections in the constituency when the member's seat is vacated.

Next, there are the provincial elections to provide members of the provincial legislative assemblies held under provincial law at irregular periods not exceeding five year intervals. Lastly, there are the local elections in the lesser areas (cities, towns, municipalities, etc.), which are conducted under provincial

<sup>1</sup>See *British North America Act, 1867*, Section 41.



laws and are characterised by regularity, usually at a set time each year and by the fact that each voter may have an opportunity to vote for candidates to fill two or more posts—as councillor or alderman, mayor or reeve, school trustee, etc. It should also be noted that Dominion and provincial—as well as local elections—never coincide. No ballot ever contains the names of candidates for different types of office. The voter's task is therefore far simpler than the corresponding and often onerous duty of the American elector. The separation of elections at the different levels of government has aided somewhat in preventing confusion of politics and policies at the different levels. The restriction of the voter's choice to filling one office has relieved the voter from the domination of party machines which steer the American voter through the intricacies of the ballot with such devices as a "party column" and "straight ticket".

The qualifications for voting and for candidacy in the three sets of elections are no more standardised than the times and areas in which they are held. Generally speaking, local franchise follows the tradition (recently abandoned in Britain) of imposing an "occupancy" test, i.e., the voter must be an owner or tenant (or the wife of one) of certain forms of property. It was, for example, only in 1942 that the occupancy test was supplemented in the City of Winnipeg by extension of vote to other adults such as sons and daughters of occupants. A wider suffrage usually exists in provincial and Dominion elections; but the two are not yet completely identical. At first the provincial electoral lists were used in Dominion elections; this, with a short break from 1885 to 1898, was continued until 1917. The provincial rules have varied very considerably, being originally devised for adult males who possessed certain property qualifications. Adult male suffrage, with minor restrictions, was first introduced in Manitoba in 1888. This was followed by British Columbia in 1904, by the new prairie provinces in 1905, by Ontario in 1907, and by the maritime provinces between 1916 and 1920, leaving only Quebec with modified

property qualifications. The disqualification of women was first removed in 1916 by Manitoba, Saskatchewan and Alberta, after which it spread rapidly to all other provinces except Quebec. Women received the provincial vote in Quebec in 1940.

Special Dominion qualifications for voting were introduced in 1917 when a War Times Election Act extended the Dominion suffrage (in view of the coming election) to close female relatives of men in the armed services. (The same act provided equal suffrage for men in the services). In 1920 a more comprehensive and almost uniform Dominion franchise was established with full equality for men and women. Under the present law, the Dominion Elections Act, 1938, voters and candidates must be British subjects (i.e., persons owing allegiance to His Majesty by birth or by naturalisation anywhere in British territories), of one year's residence in Canada (a provision not applying to candidates), 21 years of age, and not otherwise disqualified. Chief among those disqualified from voting are election officials, judges, inmates of institutions for the criminal and insane, those convicted of electoral corruption, those excluded by race under provincial law (formerly Asiatics in British Columbia and Chinese in Saskatchewan<sup>1</sup>), or those whose religion secures them exemption from military service under order-in-council (notably the Doukhobors). The attempt to compile an annual register, which was undertaken because of the unpredictability of a general election, has been given up by the legislation of 1938. In view of the infrequency of elections and the changes of residence on the part of the electors, it is now the practice to compile the register after the decision to hold an election is announced. Voters may be placed on the list in the constituency where they reside when the writ of election is issued. A preliminary register is compiled by a house-to-house canvass six weeks before the election; after public hearings for revision, this register

<sup>1</sup>These discriminations were removed by Saskatchewan in 1945 and by British Columbia in 1947 (except with respect to the Japanese). The Japanese, who were removed as a war measure from the Pacific Coast to the interior, continue to be disqualified (unless ex-servicemen) under a much-debated, though incidental, section of the new Dominion statute (1944) providing for the soldier-vote in the ensuing election of 1945.

becomes the final list in urban areas, but in rural districts there is no final list and voters may be added (under oath) at the poll.

### ELECTORAL PARTICIPATION IN GENERAL ELECTIONS

Date of election	Estimated Pop.	Voters on lists	Votes cast†	% voting
July 17, 1917	8,361,000	2,093,799*	1,885,329	78
Dec. 16, 1921	8,787,952 (census)	4,435,310	2,131,844	70
Oct. 29, 1925	9,268,700	4,608,636	3,168,412	69
Sept. 14, 1926	9,450,000	4,664,381	3,273,062	70
July 28, 1930	9,934,500	5,153,971	3,922,481	76
Oct. 14, 1935	10,949,000	5,918,207	4,452,675	75
Mar. 26, 1940	11,422,000	6,588,888	4,672,531	71
June 11, 1945	12,119,000	6,952,355	5,305,245	76
June 27, 1949	11,823,649	7,893,629	5,903,572	74

\*Not including 31 districts where return was by acclamation nor about a quarter of a million military voters.

†Includes between 20,000 and 40,000 double votes in Halifax (N.S.) and Queens County (P.E.I.)

These are the official figures reported by the Chief Electoral Officer.

A few words must now be said about the candidates, for it is from these that the "rulers of the country" are selected. The legal provisions relating to candidacy are relatively few. In Dominion elections candidates are nominated 7 or 14 days before the election by filing nomination papers signed by ten voters. The candidate must be a British subject, but need not be a voter or resident of the constituency. Usually it may be said that candidates are local men, though the absence of legal requirement makes possible the nomination of eminent men and party leaders whose place of residence handicaps their election at home. This permits wider choice of nominees. The former Prime Minister, Mr. King, was for long elected by Prince Albert, Saskatchewan, although for years he had been a resident of the province of Ontario. Altogether, in the 1940 parliament, eleven members, mostly ministers, gave addresses as outside the province in which they were elected; there are more numerous cases of members who live in the province, but outside their constituencies. On the other hand, it should be noted that there are some disqualifications from candidacy which are added to those applying to the franchise. No government contractor may stand for election nor may anyone holding office under the Crown, save Cabinet ministers under circumstances and conditions to be mentioned in the next chapter. Finally, to complete the nomination a candidate must deposit \$200 with the returning

officer. The successful candidate always receives this back, as also does any other candidate who receives half the number of votes of the elected member. This deposit serves nominally to discourage a multiplicity of candidates, many of whom could not be considered as serious contestants, but as this end could be attained with a much lower requirement as to votes secured it is evident that it is designed to protect the dominance of the two major parties.

The method of voting, especially in Dominion elections, is very simple. The names of the candidates, together with their occupations and addresses, but with no party designation, have been printed on ballots provided by the government since 1874. In each of the 260 constituencies into which the country is divided for Dominion elections, scores of polling places are established, the total number of such polls in 1940 being 31,983. Each voter goes to the poll in his neighbourhood and, when his name is ascertained as being on the register, is given a ballot with a counterfoil number which is entered against his name in the poll-book. Retiring to a compartment set aside for the purpose, he marks a cross against the name of the candidate for whom he wishes to vote and folds the ballot in such a way that nothing but the counterfoil number is revealed. The election official then tears off the number and deposits what is thus a completely anonymous ballot in the box. When all the ballots have been counted at the polling places, the candidate who receives a plurality of votes is declared elected—"returned" by the returning officer, the chief electoral official for the constituency, who so reports to the chief electoral officer at Ottawa. In the 1945 general election special provision was made for men and women in the services to vote for candidates in their home constituencies. This occasioned overseas balloting at an earlier date and delayed the final results for more than a week. Over a third of a million military ballots were cast, but though their party distribution differed somewhat from the civilian vote, they only altered the results of the civilian voting in four constituencies.

Two things will stand out in this simple procedure, which is basically that of the British tradition. One is the emphasis on the secrecy of the ballot. No voter at any stage is required or encouraged by law to indicate publicly or privately his party affiliation. The other is that, with the exception of some local officials, only legislators are elected. No executive officer and no judge is popularly elected. All executive posts are filled by appointment; those of a partisan nature, as heads of administrative departments, owe their appointment to the head of the ministry and are drawn from parliament or must shortly become members of parliament.

#### FOR FURTHER READING:

There is no adequate source to which attention may be directed comparable to the careful treatment of British or American parties. Reference, however, should be made to Brady's *Canada*, Ch. III and *Democracy in the Dominions*, Ch. V; Dawson's *Constitutional Issues*, Ch. VIII; and for comparative purposes to Corry's *Democratic Government and Politics*, Chs. VI-VIII. Among articles of special interest in the interpretation of the Canadian party system are the following:—E. M. Reid, "Canadian Political Parties, a Study of the Economic and Racial Bases of Conservatism and Liberalism in 1930", *University of Toronto Studies in History and Economics*, Vol. VI (1933), pp. 7-39, "Democracy and Political Leadership in Canada", *University of Toronto Quarterly*, Vol. IV (1935), pp. 534-49, and "The Rise of National Parties in Canada", *Proceedings of the Canadian Political Science Association*, Vol. IV (1932), pp. 187-200; F. H. Underhill, "The Development of National Parties in Canada," *Canadian Historical Review*, Vol. XVI (1935), pp. 367-87, "The Party System in Canada", *Proceedings of the Canadian Political Science Association*, Vol. IV (1932), pp. 200-12, and "The Canadian Party System in Transition", *Canadian Journal of Economics and Political Science*, Vol. IX (1943), pp. 300-16.

The proceedings of the two Liberal conferences were published as *Official Report of the Liberal Convention* (1893) and *National Liberal Convention* (1919). In 1933 both parties held summer schools which were reported as *The Liberal Way* (1933) and *Canadian Problems* (1933) respectively. Every party publishes some periodical or occasional literature. A semi-official exposition of C.C.F. policies is to be found in D. Lewis and F. R. Scott, *Make This Your Canada* (1943) which reprints the party manifestos. Some aspects of party organisation are described in J. W. Lederle, "National Party Conventions: Canada shows the Way," *Southwestern Social Science Quarterly*, Vol. XXV (1944), pp. 118-33. The type of successful candidates is analysed by L. H. Laing, "The Nature of Canada's Parliamentary

Representation," *Canadian Journal of Economics and Political Science*, Vol. XII (1946), pp. 509-15 and by M. Ward, "Parliamentary Representation in Canada," *Ibid.*, Vol. XIII (1947), pp. 447-64. An account of the election of 1945 is provided by L. H. Laing, "The Pattern of Canadian Politics," *American Political Science Review*, Vol. XL (1946), pp. 760-65. See also, D. E. McHenry, *The Third Force, The C.C.F.* (1950) and H. F. Quinn, "The Role of the Union Nationale Party in Quebec Politics 1935-48," *Canadian Journal of Economics and Political Science*, Vol. XV (1949), pp. 523-32.

Occasional glimpses into the realities of partisan action may be secured from J. W. Dafoe, *Laurier, a Study of Canadian Politics* (1922) and *Sir Clifford Sifton in Relation to His Times* (1931); O. D. Skelton, *Life and Letters of Sir Wilfrid Laurier* (2 vols., 1922); Sir George Ross, *Getting into Parliament and After* (1913); Sir R. Cartwright, *Reminiscences* (1912); Sir J. S. Willison, *Laurier and the Liberal Party* (2 vols., 2nd ed. 1926); and H. Borden (ed.), *Robert Laird Borden: His Memoirs* (2 vols., 1938).

## CHAPTER V

### THE PARLIAMENT OF CANADA

#### *The Monarchical Forms*

The Canadian constitutional system follows the four major principles of British parliamentary government. These principles are popular representation, executive responsibility, bicameralism, and monarchical form. Needless to say, these principles have undergone a special adaptation to Canadian circumstances to make them suitable to the country, for it is evident that the characteristic and historic institutions of Great Britain could not be carried abroad in all their particular features. It is now necessary to examine the nature and degree of divergence from the British model and to explain the types of constitutional problems that have arisen in consequence.

First it must be recalled that it is on the parliamentary side of the Canadian system that constitutional usages and conventions are of greatest significance. It is here that the legal and formal aspects depart most radically from the reality of political authority. The terminology of the statutory documents which establish Canadian institutions conveys little or no hint of the role of the cabinet or of the place held by political parties in the governmental machinery. The legal declarations have to be given a constitutional interpretation that does not appear in the specific wording of the statutory phrasing. The formal foundations of the system as expressed in the British North America Act of 1867 require supplementation by additional concepts derived from usage. For example, although representation is definitely provided for in the Act, the partisanship of the members of Parliament is entirely disregarded, and this is also the

case with respect to ministerial responsibility. Indeed, the very arrangement of the Act implies a "separation of powers" more like the American in a formal sense in so far as it provides for "Executive Power" in Part III, "Legislative Power" in Part IV, and "Judicature" in Part VII. Other provisions, too—especially those relating to the executive veto—indicate a formal acceptance of the unparliamentary concept of "checks and balances." The bicameral composition of the legislature likewise displays a very unreal equality of the two houses of parliament. Perhaps the most notable example of fiction in the formal establishment is that of the monarchy. Section 17 of the Act of 1867—passed in the reign of Queen Victoria—declares that "there shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons." Yet only once, in 1939, has the ruling monarch personally participated in the ceremonies of the Canadian Parliament in the same manner that he does regularly in the British.

The perpetuation of the monarchical principle was possibly the primary basis of the Canadian establishment. It had been the retention of the monarchy that had distinguished the British North American colonies after 1783 from the American colonies which had accepted republicanism. The new Confederation of 1867 continued the monarchical form in the Dominion both as the distinctive bond with Britain and as the legal foundation of executive authority in Canada. It was evidently intended that the sovereign should exercise the same legislative role in Canada that he had previously held under responsible government in the several colonies since 1848. This Canadian role, it must be remembered, was not identical with the royal function in Britain, but it may have been expected that the Canadian might soon attain the British status. Even in terms of formal law there appears a difference. In Britain, the King's participation is a personal one, even when purely formal. In Canada, on the other hand, the physical absence of the monarch necessitated legal recognition of the interposition of a representative of the King to perform the formal duties. The Act of 1867 therefore distinguished two kinds of royal powers—those requiring the



personal action of the sovereign and those capable of being performed by a representative "in the name of the Queen." Here it should be noticed that today, when emphasis is placed on the equality of the Dominion of Canada with the United Kingdom, constitutional theory tends to assume that if the king is in Canada he is as much a part of the Parliament of Canada as he is of the Parliament of Great Britain and Northern Ireland. This was intentionally demonstrated on the unique occasion of the royal visit in 1939. Opportunity was then provided for the Canadian Parliament to assemble in the presence of the king in the Senate Chamber at Ottawa just as the British Parliament does in the House of Lords at Westminster. His Majesty read a speech from the throne and gave royal assent to bills specially passed in time for this event. But this was quite exceptional. Normally the physical impossibility of the monarch's being both in Britain and in his overseas Dominions prevents his own personal and formal participation.

Apart from the one or two transitory provisions of the Act of 1867 which were appropriate to the founding of the new Dominion—such as the proclamation of the Union, the appointment of the first senators, etc.—there are few legislative functions that require the King's personal action, and none of them are in actual use. First, there is what may be regarded as a veto "on appeal." Under Sections 55, 56 and 57 of the British North America Act the royal representative in Canada may reserve bills passed by the Senate and House of Commons for the King's approval or, if the royal representative has already assented to the bills (which thereby become Acts of Parliament), the King may disallow them within two years. These two varieties of royal veto have now fallen into as complete disuse as the veto in Britain. Only one Act was actually disallowed (in 1873) and this on the ground of its conflict with the British North America Act. Its veto was followed by British remedial legislation in the form of the "constitutional amendment" of 1875 (altering Section 18 of the British North America Act). Between fifteen and twenty bills were reserved for royal consideration, most of them in the first ten years of the Dominion.

Only three failed to secure approval, and the practice of reservation was ended in 1878. It need hardly be mentioned that even when the King did exercise these formal powers over legislation, he always did so on the advice of British ministers. Today, of course, the British ministers do not come between the King and his Canadian advisers. Indeed, the remission to Westminster of Canadian legislation (as required by Section 56) has now completely ceased and full public and legal recognition of this was accorded in 1947 by the repeal of the Canadian statutory provision for the certification of Acts of Parliament for this purpose. One of the few remaining opportunities for the personal intervention of the King with respect to the legislature is to direct "on the recommendation of the Governor-General" that four or eight additional senators be appointed (Section 26). This has never been done.

The King's connection with Canadian legislation may now be regarded as purely nominal. Acts of Parliament still commence by reciting "His Majesty, by and with the advice and consent of the Senate and House of Commons, enacts as follows," but the King's part in this is non-existent in fact. The monarchical function is now performed by the Governor-General who, by the new Letters Patent of 1947, is authorised by the King "to exercise all powers and authorities lawfully belonging to Us in respect of Canada."<sup>1</sup> The Governor-General is thus in reality a viceroy, representing the King personally and performing all the royal functions relating to legislative matters. "The forms and ceremonies of viceregal participation in parliamentary processes at Ottawa are a reflection of those observed at Westminster, but if the monarchical principle introduces any personal influence in legislation, it is not that of the King but of his Governor-General.

The office of Governor-General, it is curious to note, was not created by the Act of 1867. The sovereign had often previously

<sup>1</sup>Appendix, p. 349.

commissioned one colonial governor as Governor-General over the several British North American colonies. The British North America Act simply assumed the regular continuance of this appointment, with the expectation that the Governor-General's connection with any individual province would be severed. The Act then specified the fashion and circumstances under which certain of the royal functions should be exercised by the Governor-General "in the Queen's name." For the first ten years after Confederation, the Governor-General's legislative powers were regulated by some strict limitations in his "instructions", specifying, for example, the kinds of bills that must be reserved. Since 1878, when the office of Governor-General was permanently institutionalised by Letters Patent, the holder of this post has been charged with almost unlimited "representative" powers in the field of legislation. In practice, of course, the Governor-General used to be guided by the British minister, the Colonial Secretary, to whom he owed his appointment and from whom he received considerable advice. This was brought to an end in 1926 by the Balfour Report which declared "that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King of Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government." There were, too, some British statutory requirements for the exercise of the reservation of Dominion legislation, but the two Acts concerned, the Colonial Courts of Admiralty Act, 1890, and the Merchant Shipping Act, 1894, were repealed in this respect by the Statute of Westminster, 1931.

For all formal and practical purposes, therefore, the parliamentary functions of the monarch are now performed in Canada by the Governor-General without any reference back to the King or to his British advisers. These functions are of five types: (i) summoning of the House of Commons, under Section 38 of the British North America Act; (ii) appointment of

senators, under Section 24; (iii) dissolution of parliament before the maximum term of the House of Commons has expired, under Section 50; (iv) assenting to legislation under Section 55; and (v) recommending financial measures to the House under Section 53. Under normal circumstances all of these functions are performed by the Governor-General on the advice of the Canadian Cabinet; but it is not quite accurate to say that he has no personal discretion whatsoever. There is no example of a Governor-General's refusal to follow his ministers' advice in regard to the summoning of parliament, nor (for some sixty years) of his failure to give the royal assent to legislation. It is not known that any Governor-General has objected to recommending his ministers' financial measures to the House; indeed, this provision, copied from a standing order of the British House of Commons, is chiefly designed to prevent private members of parliament from taking the initiative in money bills. Yet it may be recorded that the very first occasion on which a Governor-General came into conflict with his ministers and with parliament was over his own (reduced) salary bill (1868) which he reserved for the Kings' pleasure. It was one of the three reserved bills which failed to secure royal assent.

The chief controversies that have occurred relate to the appointment of senators and the use of the power of dissolution. In 1873, the Governor-General, instructed by the British advisers of the Queen, refused to make the additional senatorial appointments that a new Prime Minister considered desirable to improve his political position in the Senate. In 1896, a later Governor-General also refused to appoint senators (and some other officers) as requested by a Prime Minister who had just been defeated at the polls and was presumably about to resign. In both these cases the appointments were plainly partisan manoeuvres and the Governor-General felt on firm ground in taking an independent course. The latter case in particular raises in an acute fashion the responsibility of the monarch's representative for the prevention of a legal but unconventional piece of conduct on the part of his ministers. Opinion long inclined to the view that the

Governor-General's discretionary power ought not to have been exercised<sup>1</sup>.

All the above examples are drawn from the nineteenth century when it was possible to appeal to the British ministers for final decision. It was not until 1926 that the Governor-General's full responsibility was seriously brought into question. On all earlier occasions the Governor-General had conformed to his ministers' desires as to the duration of parliament. Only once previously, in 1873, had the Governor been uneasy about granting a prorogation, i.e., the conclusion of one session coupled with postponement of the next. At that time the evident reason for prorogation was the ministry's fear of meeting defeat at the hands of the House, and the Governor-General accepted it with the stipulation that parliament should be convoked again as soon as possible. In 1926, however, the Governor-General actually did refuse to dissolve parliament when the Prime Minister (Mr. King) sought it apparently for the purpose of avoiding a possible vote of censure on the administration of the customs department. Thereupon, Mr. King's ministry resigned and the Opposition Leader (Mr. Meighen) took office. When the latter likewise failed to secure adequate or continuous support in parliament, the Governor-General granted him a dissolution. The new ministry was defeated at the election which was very largely fought on the propriety of the Governor-General's conduct. The constitutional dispute has not yet ended. As it came just before the meeting of the Imperial Conference which defined Dominion Status, the issue was no doubt considered by the Balfour committee, but no definitive rule was laid down, for the matter is perhaps incapable of precise statement. Yet it was this Canadian conflict that led to the declaration that the Governor-General should be governed by the same rules as His Majesty is in Britain. What these rules are, however, is still open to dispute. No monarch has actually refused to dissolve parliament against ministerial advice for over a hundred years; but whether he can do so constitutionally is not clear.

<sup>1</sup>See below, pp. 166-71.

In conclusion, then, it can be said that though the King is a part of the Canadian Parliament, he does not in fact actually exercise any personal influence. In his place, for formal and ceremonial purposes, the Governor-General now performs all the royal functions, whatever the British North America Act may say. But it is the duty of the Governor-General to perform his duties in the same manner that the King would. What discretion this leaves him is necessarily obscure. At any rate, it is only in the most exceptional circumstances that the King would resort to his discretionary power. More will be said of this in the next chapter when the Cabinet and administration are discussed.

### *The Senate of Canada*

It is to be expected that the Canadian parliamentary system, being modelled on the British, should be constructed on a bicameral basis in which the lower chamber is the dominant partner. What is unexpected, however, is the superficial resemblance of the Canadian Parliament to the American Congress in the composition of the two houses. This is another example of the interesting combination of American expedients with British principles which springs from the introduction of federalism. But the application that was made in 1867 of the American device as to structure of the two houses should not be allowed to obscure the fact that the Canadian Parliament follows the British type so far as the status and influence of the upper chamber are concerned.

Both American and Canadian constitution-makers were deeply impressed by the tradition of bicameralism in the Mother of Parliaments. The happy accident which had produced two English houses had contributed to the preservation of parliamentary institutions while the representative "estates" of other countries fell by the wayside. Bicameralism was also a common colonial heritage. By the eighteenth century a second chamber was appreciated not for its hereditary character but as an organ for restraining an impetuous popular assembly. The attempt to found a feudal aristocracy on the American continent had not

been completely successful, but all through the colonial period appointive upper councils had been retained to act as checks on the elected representatives. The Fathers of Confederation had little more enthusiasm for unqualified democracy than the American members of the Philadelphia Convention of 1787. At Quebec, in 1864, there was the same talk of installing a revising chamber which should express the "sober second thought" of the nation. But the really decisive factor in Canada was that the American type of "compromise" provided the opportunity for solving one of the most difficult problems of representation where unequal colonies were involved.

After the union of the two Canadian provinces in 1841, the rapid growth of the English-speaking population along the St. Lawrence River and to the north of Lake Ontario had given rise to an insistent demand for readjustment in representation in the assembly of the united colony. The incompatibility of "Rep. by Pop.," as the English agitation was called, with the racial equality of the two peoples became one of the forces producing stalemate in the government of the colony before 1867. The admirable American device of providing equality for the governmental units in one chamber and representation proportionate to population in the other appeared eminently suited to the new federation. Yet the Canadian application of this mode of compromise differs from the American in an important respect. The redivision of the United Canadas into two provinces—Ontario and Quebec—was only one part of the federal programme. The wider prospect of bringing the maritime colonies into the new union was envisaged, and this, it was perceived, would defeat the desired racial equality in the upper chamber to the extent that all provinces were treated equally. Accordingly, the American scheme of granting equality in the Senate to all the federating colonies was modified by the adoption of a regional equality. The lower house was to be representative of population; the upper was to provide equality, not for all the federated provinces, but for the three major territorial "divisions" into which the races and economic interests fell. Twenty-four

senators were therefore allotted to Ontario (the earlier "English" Upper Canada), twenty-four to Quebec (the earlier "French" Lower Canada), and twenty-four to the maritime provinces (twelve each for Nova Scotia and New Brunswick). Thus, instead of the Canadian Senate being founded either upon provincial or racial equality, it was to give some recognition to the individuality of the federating units, some concession to racial claims, and some acknowledgment of the divergent social and economic interest of the separate portions of the new country.

The disposition of the above representation in the Senate was specified in Section 22 of the British North America Act. The accession of additional maritime provinces was provided for by Section 147, in accordance with which Prince Edward Island entered the Confederation in 1873 as a part of the "maritime division," receiving four senators who were deducted equally from the Nova Scotia and New Brunswick representation. The admission of Newfoundland was contemplated as a special case—with four senators outside the "division" system—though this unbalance did not actually arise until that province's entry in 1949, when it came in with six senators. Very much earlier, however, the balance of regions was upset from an unexpected quarter. The admission of provinces in the west had been envisaged in 1867, but no special provision respecting their senatorial representation was made, an oversight which had to be remedied in 1871 by the passage of a permissive British statute—the first constitutional amendment designated as a "British North America Act." From 1870 to 1915 the western provinces were completely outside the regional foundation of the Senate. The Manitoba Act of 1870 provided that new province with two senators and with arrangement for increase of representation as the population grew. British Columbia, though the only western colony specifically mentioned in the British North America Act as a possible entrant, was admitted to the Dominion in 1871 without any provision for alteration of its representation in the Senate which was set at three senators. The Northwest Territories were first given two senators in 1888



under authority of a constitutional amendment of 1886; later they received four in 1904, and, when the provinces of Saskatchewan and Alberta were carved out of the Territories in 1905, they were assigned four seats each. The continued growth of the western population made the disparity of representation in the Senate a serious grievance in the west. At last, in 1915, a

### PROVINCIAL REPRESENTATION IN THE SENATE OF CANADA

	1867	1870-81	1882-91	1892-1914	1915 on
Ontario	24	24	24	24	24
Quebec	24	24	24	24	24
Nova Scotia	12	10 (1873)	10	10	10
New Brunswick	12	10 (1873)	10	10	10
P.E. Island	—	4 (1873)	4	4	4
Manitoba	—	2 (1870)	3	4	6
Saskatchewan	—	} N.W.T. 2 (1887)	2 (1887)	4 (1903) { 4 (1905)	6
Alberta	—				6
British Columbia	—	3 (1871)	3	3	6
Newfoundland	—	—	—	—	6 (1949)
<b>Total</b>	<b>72</b>	<b>74-77</b>	<b>78-80</b>	<b>81-87</b>	<b>102</b>

constitutional amendment was agreed upon and the appropriate measure was passed by the British Parliament. The four western provinces were established as a fourth "division" with twenty-four senators, six being allotted to each province, and thus regional equality was again restored. Of these regions, it may be noted that three are now fairly evenly balanced in population. The Western, Ontario, and Quebec divisions are all close to four million inhabitants; but the Maritime division, with an aggregate population of about one million, is now considerably over-represented in the Senate.

Senators are appointed for life by the Governor-General in accordance with Sections 24 and 26 of the British North America Act of 1867 and this means, of course, that the Prime Minister usually fills the vacancies as they arise, though he may allow as many as a dozen to accumulate, as Mr. King has recently done. The following legal qualifications for appointment are laid down: senators must be British subjects, thirty-five years of age, owners of property to the value of \$4,000.00, and resident in the province for which they are selected. Quebec is the only

province not treated as a unit for senatorial representation; each Quebec senator is appointed for one of the twenty-four subdivisions of the province and must be qualified by residence or property in that district. This provision was intended to hinder discrimination against either the French or English. Senators receive the same compensation as members of the House of Commons; they cease to be senators when they fail to satisfy any of the qualifications named above or if they are absent for two consecutive sessions. In 1930 the Judicial Committee of the Privy Council decided that the terms of the Act of 1867 permitted the appointment of women as senators; only two have thus far been selected. Finally, it may be observed that, although senators are appointed to represent the provinces, they are spokesmen neither for the provincial governments nor for the provincial electorates. They bear no resemblance to the senators of other federated democracies.

[As might be expected in a partial transcript of the British constitution of 1867, the British North America Act said little about the status of the Senate in the Canadian parliamentary system. On the face of it, the two houses are equal. That money bills must originate in the House of Commons under Section 53 is of little importance, for all bills require passage by both chambers before presentation to the Governor-General for the royal assent.] There is thus almost complete formal equality of the two legislative chambers and there is no formal constitutional device for resolving political differences between the two bodies. The constitutional problem presented by bicameralism in representative legislatures springs from the possible divergence of the two houses in regard to partisan complexion, such as is seen in the United States where a Senate with a Republican majority will be in conflict with a House of Representatives containing a Democratic majority. Under cabinet government this possible cleavage is accentuated since the responsible ministry is dependent on the majority in the more popular house. It has never been proposed that the Canadian cabinet should be responsible to the Senate as well as to the House of Commons, for this

would not only be completely contrary to British constitutional principles but would prove as disastrous as double responsibility did under the French Third Republic. The Senate has, therefore, nothing to do with the operation of the primary principle of ministerial responsibility. Usually, however, there is one senator in the cabinet, a minister without portfolio, whose duty it is to act as the government leader of the Senate.

[The important thing to be noted is the possibility that a ministry supported by a majority in the House of Commons may be faced by a hostile majority in the Senate. The fact is that no matter how elderly, wealthy, or politically unambitious the senators may be, they are political partisans. With but one or two possible exceptions, every new Senate appointment has been made by the Prime Minister of the day from among his own political supporters. Any ministry that comes into office after a considerable term in opposition will find that its predecessor has built an unassailable partisan defence in the Senate. This was the case with the incoming Liberals in 1873 and 1896, for the constantly decaying Senate had been replenished exclusively with Conservative nominees in the years before. At the end of 15 years of Liberal government this position was reversed, for all 81 new senators were Liberals; and in 1911, when the Conservatives returned to power, they had only 22 out of 87 senators. This situation has been repeated at each later change of ministry. The partisan contrast between a life-tenure chamber and an elective house is most noticeable in the early days of a new administration. As time goes on, of course, the death of the aged senators permits a Prime Minister to redress the balance, for some four or five vacancies occur each year. But the general consequence of this political divergence is that a new ministry may find its most important measures subjected to serious amendment, if not rejection, by an irresponsible chamber. Nearly one hundred and fifty bills originating with the ministry in the House of Commons have been rejected by an Opposition-controlled Senate. The most noted case is that of the Senate's defeat of the Navy Bill in 1913.

At the time when the British North America Act of 1867 was drafted, conflicts between the British Houses of Parliament were understood to be capable of solution through the Crown's right (on ministerial advice) of creating such additional peers as were necessary to convert the Opposition majority in the House of Lords into a minority. In Canada, however, the regional distribution of Senate representation was considered to preclude the adoption of this safety-valve. Nevertheless, the British ministers did insist on inserting in the Act a provision (Section 26) for a very limited power of additional appointment capable of regional equality—namely, three or six senators might be added (now increased to four or eight respectively under the four divisions established in 1915). This relatively ineffective power has never been employed. The sole Canadian request for its use was rejected by the British advisers of the Crown in 1873. In any case, it is quite clear that these few additional appointments would often be inadequate when the disparity between party majorities is at its height.

"The Senate", it has been said, "is the one conspicuous failure of the Canadian constitution." The failure springs from the unchanging partisanship of the appointees; the Senate has been called the ministry's largest "pocket-borough." The one saving grace possessed by the Senate is its recognition of its inferior position in the parliamentary system and its appreciation of the fact that its continued existence is dependent upon avoidance of a serious clash with a determined Government. Senators realize as well as anyone that they represent neither provincial governments nor electorates but simply Dominion ministries which may since have been defeated. They are therefore reluctant to exercise their full legal authority. Their chief influence comes not so much from actual legislative veto as from its possibility. In every session the government of the day is forced to accept their (usually) minor amendments to its legislation as the price for peaceful acceptance of its continuance. For some thirty years the public has been scarcely aware of the Senate's existence, for its proceedings are rarely reported in the press.

Since the naval episode of 1913 no serious agitation for reform has been aroused in Canada comparable to that in Britain and there has been little discussion of a constitutional change similar to that of the (British) Parliament Act of 1911. Indeed, it is generally overlooked that Senate participation is required in the adoption of a parliamentary address authorizing a constitutional amendment. So far, however, there have been but few amendments and these with little social or economic significance. Yet in 1914 the Senate blocked a constitutional amendment involving reapportionment of senators, though it consented to it the following year. As a delaying body, therefore, the Senate represents entrenched interests capable of delaying constitutional or social reform but probably incapable of continuous resistance.

The Canadian Senate cannot be compared at all to the American Senate in function. It is more comparable to the British House of Lords but with this difference, that while the House of Lords is permanently biased in favour of conservatism as interpreted by Conservatives, the Senate is permanently conservative under the slowly changing labels of partisan Liberalism and Conservatism. At its worst, the Senate may be considered as a parliamentary anachronism inherited from pre-democratic days of the early nineteenth century; at its best, the Senate institutionalises the political manoeuvring which was required in 1867 in order to reconcile provincial politicians—especially the legislative councillors who were promised appointment—to the Confederation movement. Its primary use, now as then, is to provide a dignified seclusion for retired politicians who have deserved well of their party leader. It serves a secondary purpose as a chamber for the revision of legislation, but this function is hampered by the lateness (in the session) with which bills come to it from the lower house. Its most effective work is perhaps performed in relieving the House of Commons of the detailed consideration of petitions for divorce from residents of Quebec and Newfoundland, provinces with no judicial proceedings on this subject. This task, though generally performed by a Senate committee (consisting of four lawyers, four laymen

and one doctor) in an impartial and semi-judicial fashion, might better be relegated to a permanent court of professional judges.

### *The House of Commons*

Like other lower chambers that follow the British tradition, the Canadian House of Commons is designed to represent the populace as distributed in the numerous communities of the country. While the Senate was utilised to ensure regional equality in the representation of the provinces, the House was devised to provide proportionate representation for the provincial populations. In accordance with the census estimates of the day, the House was originally constituted with 181 members divided as follows:—Quebec 65, Ontario 82, Nova Scotia 19, and New Brunswick 15. The size of the House could be altered by Parliament “provided the proportionate representation of the provinces prescribed by this Act is not thereby disturbed” (Section 52 of the British North America Act, 1867).

The greatest difficulty presented by “rep. by pop.” (as proportionate representation was called in the agitation of a century ago) springs from varying rates of change in the several communities. To avoid the lengthy intervals between English “reforms,” the Fathers of Confederation adopted the American device of imposing in Parliament the duty of making a revision after each decennial census. To avoid future controversies over the size of the House and the unit of representation, they hit upon what seemed the admirable device of making Quebec, then possessing the most stable population, the pivot about which changes in representation should revolve. That province was therefore accorded a defined quota of 65 members; other provinces were to have their quotas set after each census in the proportion that their populations bore to that of Quebec. The calculation was made by dividing the Quebec population by 65 and using the resultant quotient as the qualification for members. This “quotient” was then divided into each province’s population and the result gave the several provincial quotas.

The purely mathematical proportion, however, has never been completely followed. Political pressures could not always be restrained. Special representation that was often hard to justify on a proportionate basis has been granted to new provinces (Manitoba received 4 seats in 1870, British Columbia 6 in 1871, Prince Edward Island 6 in 1873, Saskatchewan 6 and Alberta 4 in 1905) and to new territories (North-West Territories 1 in 1887 and Yukon 1 in 1902). Then, too, the failure of some provinces to maintain a proportionate growth of population led to the claim for special protection. The maritime provinces fell from their peak in 1882 to a new low in 1914 (Nova Scotia from 21 to 14, New Brunswick from 16 to 11, and Prince Edward Island from 6 to 3). A constitutional amendment was therefore adopted in 1915 to provide that a province should always be entitled to a number of members not less than its senators. By virtue of this guarantee Prince Edward Island has been raised to 4 seats in the House. More recently, the prairie provinces that had benefited most regularly by decennial redistribution (Manitoba rising from 4 to 17, Saskatchewan from 6 to 21, Alberta from 4 to 17) have suffered a similar decline in the 1930's and early 1940's. After the census of 1941, which indicated prospective losses for Manitoba and Saskatchewan, they were able to obtain a constitutional amendment suspending readjustment for the duration of the war.

Furthermore, it must be remarked that the original terms of Section 51, in which the rules were laid down, contained a complicated provision of such consequence as to become known as the "joker." No province was to lose representation at a readjustment unless the proportion its population bore to the Dominion total should have declined by one-fifth or more since the last census. The effect has been to protect some provinces from loss of representation even though the cumulative diminution over several decades produces considerable mathematical disparity in representation. Ontario, the chief beneficiary of this rule, rose to a peak of 92 after 1881, but fell back to 82 in 1911 and it had been kept at this number even though the proportionate quota should have been 74.

A readjustment of representation should have been made after the census of 1941, but, as already stated, the obligation to proceed with it was postponed for the duration of hostilities by an amendment of 1943. The chief reasons officially declared in the Address requesting the postponement were that great temporary movements of population had occurred during the war and that experience indicated that such readjustments gave rise to "sharp differences of opinion," an undesirable situation in war-time. The Dominion government may have been encouraged to deal tenderly with Saskatchewan and Manitoba then, because they were the places where Liberal supremacy was being challenged by the rise of the C.C.F. At any rate, Manitoba and Saskatchewan outweighed the vigorous protests of Quebec, whose influence was proportionately diminished by retention of the old distribution. After the cessation of hostilities in 1945, the issues were revived by Quebec spokesmen and M. St. Laurent (the Minister of Justice who had moved the 1943 postponement) declared himself dissatisfied with the existing rules. Accordingly, in 1946 he introduced for the government, an Address requesting a complete revision of Section 51, which was carried despite Quebec's objection that it was a violation of the terms of the original "compact."

Under the new provisions of Section 51, the fixed quota for Quebec is abandoned and in its place a definite total of 255<sup>1</sup> members is set for the House. One seat is specifically assigned to Yukon (and any territories associated with it); no province is to have its members reduced below its representation in the Senate—a provision that continues Prince Edward Island with 4 seats outside the proportionate principle. The computation of representation for the other provinces is based on the "quotient" that is secured by dividing the population of the remaining eight provinces by the number of seats left to be distributed. Under the census of 1941 this is  $11,394,666 \div 250 = 45,578$ . The population of each province is then divided by this "quotient" and the resulting figure is the province's quota of members. If these provincial quotas do not total the 250 seats to be

<sup>1</sup>Now raised to 262 with Newfoundland's accession, which, however, does not affect the new mode of calculation.



distributed, the surplus (which is 3 in the present case) is to be awarded the provinces in the order of size of their remainders when the "quotient" is used.

The current merits of these new rules are apparent. The handicaps of the old "joker" rule are abrogated and proportionate representation is restored for all except the smallest province and territory. Almost every province gained something. Quebec, a Liberal stronghold, exchanged her guaranteed 65 members for greater numbers and more influence in a larger house of fixed size. The eastern maritimes, predominantly Liberal, are still protected by a minimum rule and Nova Scotia actually gains a seat. Ontario, the home of the former "rep. by pop." agitation, could hardly object to the abrogation of the one-fifth rule that had protected its membership for thirty years, especially as—though a "doubtful" province politically—she gained an additional member and is still above the original number of Confederation. Alberta, also a beneficiary of the "joker" but politically lost to the Liberals, retains the same number of seats. British Columbia, a doubtful province politically, gains two members. The only losers are the two prairies provinces of Manitoba and Saskatchewan—and the latter was lost to the Liberals despite the postponement of 1943—but even they receive only one member apiece less than at present instead of the loss of three and four respectively under the old rules. But whether everyone will be as happy in future remains to be seen, for, as will be observed, no other section of the British North America Act has been the subject of so many alterations and supplementations as Section 51.

While the principles upon which apportionment is made between provinces are to be found in constitutional law, the actual subdivision of the provinces into constituencies rests upon parliamentary will. The first three redistributions of representation (1872, 1882 and 1894) were made while the Conservative party was in power and were the occasion of considerable partisan manipulation of constituencies. The Liberals consistently denounced the practice of gerrymandering and at the national

Comparison of Provincial Representation in the House of Commons  
under the *Old* and *New* Rules

Province	Population (Census of 1941)	Present Repre- sentation (Census of 1931)	Readjust- ment under Old Rules	Proportionate Repre- sentation	Readjust- ment under New Rules
Quebec.....	3,331,882 <sup>1</sup>	65	65	65	73
Ontario.....	3,787,655	82	82	74	83
Nova Scotia.....	577,962	12	12	11	13
New Brunswick..	457,962	10	10	9	10
Prince Edward Island.....	95,047	4	4	2	4
Manitoba.....	729,744	17	14	14	16
Saskatchewan....	895,992	21	17	17	20 <sup>3</sup>
Alberta.....	796,169	17	17	16	17
British Columbia.	817,861	16	16	16	18 <sup>3</sup>
Yukon and North- west Territories	16,942 <sup>2</sup>	1	1	0	1
Totals.....	11,506,655	245	238	224	255

<sup>1</sup>The Quebec Boundary Extension Act of 1912 expressly excluded the population of Ungava or New Quebec from the calculation of the Quebec "quotient." In 1946 it was intended to eliminate this exclusion, but, being a boundary act requiring concurrent provincial legislation, the failure of the province to take action by the time the readjustment act was passed in 1947 necessitates reducing this population by that of New Quebec. The figure is so small (3,067), however, as to have no other effect than to reduce the New Rule "quotient" of 45,578 by 12. This does not alter the calculations proposed in 1946.

<sup>2</sup>Yukon alone was represented under the statute of 1902. Its population in 1941 was 4,914. By the Representation Act of 1947 the western portion of the Mackenzie district (N.W.T.) is added to the Yukon for electoral purposes.

<sup>3</sup>These provinces, having the largest remainders after dividing the "quotient" into their populations, receive an extra member in order to bring the House to its full total.

party conference of 1893 pledged themselves to put an end to this tampering with the free representation of public opinion. However, it was not until the fourth redistribution (1903) that the Liberals found the opportunity to carry out their pledge. The Laurier ministry then adopted the novel device of presenting to parliament a bill for reallocation of membership without attaching to it a schedule of constituencies, and the Opposition were invited to participate in a committee to prepare the new boundaries, which was done with considerable fairness. In 1914 the Conservatives followed the same procedure, and the bi-partisan preparation of electoral divisions has become an accepted procedure. The worst features of gerrymandering have apparently been eliminated, though the majority party is still accused of discriminating against its opponents. In 1934 the Conservatives were charged with unfair juggling with boundaries in Quebec and in the constituency of the leader of the Opposition (Mr. King), and in 1947 it was evident that the prospects for re-

election of the leading Conservative members were affected by the changes then made under Liberal auspices.

The distribution of representation according to population, as measured roughly by the Quebec "quotient," has not meant that constituencies are of equal size. Urban constituencies are quite regularly greater in population than rural ones. One justification advanced for this is that the larger area to be covered in the country is additionally burdensome on the candidates, although it is agreed that an urban campaign costs much more money. It also seems to be tacitly assumed that a conservative agricultural population deserves to be strengthened against the more radical urban centres. Although the 1931 "quotient" for representation works out at roughly one member for each 44,000 inhabitants, constituencies vary considerably in size. There were 43 constituencies with fewer than 30,000 residents (6 of them having less than half the quota) and 62 with more than 50,000 (11 of them being one and one-half times the quota). The areas involved, it is needless to add, vary from thousands of square miles to a few score. The general result is to accentuate the misrepresentation which is already operative under the single-member constituency system. For example, at the general election of 1940, Souris, the least populous rural constituency of Manitoba (with 22,157 inhabitants, of whom 13,924 were registered as voters), the member (a Conservative) was elected by a supporting vote of 4,911, whereas in North Winnipeg, the same province's most populous urban constituency (with 71,904 inhabitants, of whom 52,959 were registered voters), the successful candidate (a Liberal) secured 13,015 votes and his unsuccessful C.C.F. opponent received twice as many votes as the successful Conservative candidate at Souris. In terms of the total national vote this produces marked political and parliamentary changes with slight or negligible voting change. In 1930, for instance, Mr. King's candidates received 46.2% of the national vote, but only 88 were elected; in 1935, his candidates received 46.8% of the national total, but 172 were elected. As one critic commented, "the difference between 46.2% and

46.8% of the votes was the difference between wandering in the valley of humiliation and heading the most secure government in our history." In 1940, with 54% of the vote, the Liberals increased their parliamentary representation to 187; but in 1945, with 41%, they lost their absolute majority, though remaining the largest party (119). In 1949 a 50% vote won 189 seats.

A new House of Commons is elected with a maximum life of five years. As a result of this limitation—to be found in Section 50 of the British North America Act—a transitory constitutional amendment had to be secured in 1916 to permit an extension of the parliamentary term for an additional year. No other war-time postponement of elections has occurred; general elections were held in 1917 during the first world war and in 1940 during the second. It must not be thought that the five-year maximum requires regular elections by the calendar, as in the United States. Usually a parliament is brought to a close by executive dissolution which is accompanied or shortly followed by the summons of a new parliament. Thus in the first eighty years (1867 to 1947) twenty parliaments have been elected, with an average life of four years each. General elections are decided on by the ministry and the primary reasons for choosing any particular time are political, though quite evidently an eye has to be kept on the legal maximum duration. Some ten parliaments have approached within a very few months of their possible life, and one, as already noted, was extended for a year during the first world war.

The conduct of elections is carefully regulated by statute. General elections, as well as the special by-elections required to fill vacancies as they occur, are supervised by the Chief Electoral Officer, a permanent and well-paid (\$8,000 per annum) official under the jurisdiction of the Secretary of State. It is the Chief Electoral Officer's duty to issue "writs of election" to his subordinates (the returning officers) in the constituencies, to prepare election instructions, record and publish the electoral results, and to report to the Speaker of the House. Election disputes have been tried by provincial judges ever since the Controverted Elections Act of 1873, a procedure which prevents the delays and

partisan manoeuvres found in inquiries by parliamentary committees. Objection to an election must be made by petition within thirty days of the return and must specify an illegality of conduct or corrupt practices such as bribery or non-compliance with the specific terms of the election laws. Although this judicial procedure has not completely purified Canadian elections, for there seems to be political agreement not to press charges of unlawful practice against parties or candidates who engage in them, it does serve to ensure impartial investigations when they are sought. The employment of judges in such cases does not interfere with the other aspects of House control over members who may still be expelled as unfit or suspended from service for breach of privilege.

One of the most curious anomalies of the parliamentary system is to be found in the special legal disqualifications imposed on members of the House of Commons, namely, exclusion from office-holding under the Crown. On the face of it, this is an indication of separation of powers and is quite contrary to the essential combination of executive and legislative functions which characterises cabinet government. The origin of these regulations to preserve the "independence of parliament" is to be found in the English constitutional struggles of the seventeenth century. At that time the chief threats to parliamentary liberty came from the King's efforts to intimidate some members by imprisonment, to control others by appointment to office, and to corrupt still others by contracts and monopolies. Similar influences were felt in the colonies during the struggle for responsible government. Protection against royal coercion was the first aim of parliamentary privileges. Section 18 of the British North America Act declares that the privileges, immunities and powers of the two Houses and their members may be defined by statute (though not to exceed, under the constitutional amendment of 1875, those of the British House of Commons at the date of such definition). A series of statutes have been passed for this purpose. At the commencement of a new parliament, the Speaker-elect of the House, on being presented to the Governor-General in the Senate chamber, immediately claims

for the Commons "all their undoubted rights and privileges, especially that they may have freedom of speech in their debates, access to his Excellency's presence at all seasonable times, and that their proceedings may receive from His Excellency the most favourable interpretation." The most insidious danger, however, was thought to lie in executive influence resulting from the appointment of members to "offices of profit." On this the English tradition has been followed. The Act of Settlement, 1701, completely excluded from the Commons members who accepted royal appointments. This was shortly modified to permit specified ministers to sit there if re-elected. In Canada, too, until 1931, members of the House who took ministerial posts had to seek re-election, but since that date the necessity for such by-elections has been removed. Apart from this political exception, necessitated by the nature of cabinet responsibility, the general rule is that no member of parliament may hold an executive post. (Perhaps it should be added that, by tradition as well as by the Independence of Parliament Act of 1878 and its amendments, King's counsel and military officers, extended in 1940 to all men on active service, are excepted from this prohibition as not being political or administrative). These rules were in force in many of the colonies before Confederation, as was the third aspect of parliamentary independence, the exclusion from the House of government contractors, that is, those who are engaged in providing supplies or constructing public works for any government department.

The introduction of federalism added a further question respecting membership in the Dominion parliament. At first there was nothing to prevent provincial legislators (including provincial ministers) from sitting also as members of the House of Commons. Indeed, Edward Blake, Liberal leader in Ontario, sat in both legislatures at first. Provincial legislation, however, was soon passed to prohibit this dual membership and in 1872 a Dominion statute forbade the practice so far as the Dominion was concerned. The result is that today there is, as in the United States, a clear separation of the two sets of legislators

with the one exception of Quebec legislative councillors who may also be Dominion senators.

Contrary to English legal theory, Canadian members of parliament, both of the Senate and House, may resign their seats. While they do sit, members of both houses receive an indemnity of \$4,000.00 for each session of more than 65 days (with proportionate sums for shorter periods and subject to deductions for absence), an annual living allowance of \$2000, as well as free railway transportation to and from their constituencies.

### *Cabinet and Parliament*

The King (through his representative, the Governor-General), the Senate and the House of Commons constitute the Parliament of Canada. The concurrence of each is formally necessary for every legislative act. It does not follow from this, however, that all component parts are of equal weight in the parliamentary system. There need be no doubt that the House of Commons is the real centre of parliamentary authority. Although it possesses few specific powers that are not legally shared with the King or Governor-General and Senate, it is beyond question that the House of Commons exercises a preponderant influence in Canadian government. All legislation must, of course, receive its approval. Money bills must originate there, according to Section 53 of the British North America Act; and in actuality *all* legislative proposals of general importance are first introduced and passed in the House. No King or Governor-General may constitutionally block the will of the House; and the Senate's occasional resistance may be regarded as a conditional and delaying impediment rather than a positive menace to the power of the Commons.

From this it should be clear that the House of Commons does not receive its importance from the terms of the Act of 1867, in which the King and his viceroy and the Senate occupy an equal or greater place, but rather from the nature of the parliamentary system. Nor should it be thought that the House owes its dominant position simply to its being the popular and

representative chamber, for it will be recalled that the American equivalent, the House of Representatives, was as much overshadowed (as at present) by the Senate before the latter became a popularly elective body. And among parliamentary types it will be noted that popular election of the Irish President, who now takes the place of a King or Governor-General, and of the Irish Senate, which is chosen by proportional representation, has not altered in the slightest the supremacy of the Dail Eireann, the Irish Chamber of Deputies. The fact is that with cabinet government the lower chamber is predominant because of the distinctive relationship it bears to the executive, the Cabinet. Cabinet government might possibly function without a King or president and upper chamber; it can not work without a House of Commons.

As Bagehot pointed out some seventy-five years ago, the legislative function of parliament, the mere making of laws, is less significant in the British type of parliamentary system than the power of determining, maintaining, and rejecting the ministry. The characteristic principle of cabinet government is that the chief active executive heads should be in harmony with the House of Commons. Expressed in the old colonial terms of responsible government, this means that the Governor-General must draw his advisers from parliamentary leaders who are responsible to the lower house. In the language of British constitutionalism, this is stated as the rule that the ministers of the Crown must possess the confidence of the Commons. Today, in Canada, it implies that the partisan majority in the House of Commons determines the party composition of those in charge of the administration. And on this point the Senate has nothing whatever to say and the King or Governor-General have little influence except perhaps when no majority exists in the House or when the majority has a dubious future. It is in the House of Commons, therefore, that the characteristic parliamentary union of executive and legislative branches of government is secured, and it is for this reason that the House is and will remain important. The guiding executive committee, the Cabinet, takes



its political colour from the party dominating the House. With one or two exceptions, the ministers of the Cabinet must be or must become members of the House of Commons. There is no rule distributing ministers between the two Houses, as there is in Britain, but it is many years since three senators held posts and there have been ministries without any representation in the Senate. The position is quite definitely the reverse of the American, where no executive officer may sit in either house of Congress. The ministers who sit in the Canadian Commons must accept full responsibility for all executive policy and administrative actions connected with the government of the Dominion of Canada. Sitting in the House, they are brought face to face with their chief critics, the Opposition, and must answer for all governmental actions. The ministers must give guidance and leadership to the deliberations and proceedings of the House (and also to the Senate as far as possible) with a view to getting the necessary legislation passed, securing authority for the collection of revenue, and receiving approval for governmental expenditures. It is in the House that the ministers make the most careful defence of their policy and declare the Government's intentions.

So important is the connection of the House of Commons with the executive ministers that it may be asserted that the main function of the House is to provide and maintain His Majesty's Government in Canada. This means that it is the duty of the House to record the will of the electorate as shown at a general election regarding rival claimants for office and to indicate clearly what party leader may be called upon by the Governor-General to form a Cabinet which will have the confidence of the House. It is the further duty of the House to support this administration until such time as another ministry becomes necessary. In view of the partisan composition of parliament, the Cabinet will usually be selected from the majority party of the House, and it is the obligation as well as the interest of this party to render its leader fairly secure in office under the Crown. "Supporting" the government implies the passing of

such legislation as is required for carrying out the administrative policy, approving financial measures required for the various services, and voting generally in defence of the cabinet when it is attacked in a partisan manner.

Accompanying this function of providing the government, the House has another function, that of criticism. The House of Commons is the people's commission of inquiry or grand inquest into the state of the country. As the ministers are drawn from the majority party, so the critics may be expected chiefly in the ranks of the minority party or parties. The minority is entitled to oppose the Government and to subject its policies, proposals, and actions to rigorous examination and discussion. While it is the Cabinet's right to govern in a constitutional manner, it is the duty of His Majesty's loyal Opposition to oppose that government by all constitutional means. Under ordinary circumstances, of course, the Opposition can neither stop a determined administration from pursuing its avowed programme nor actually defeat the ministers on any particular point. But the Opposition is quite justified in attempting, by every argument and device at its disposal, to persuade the government to make reasonable concessions or to introduce desirable reforms. In undertaking its task of criticism, the Opposition (on behalf of the House) cannot expect to take a really constructive part in government; it must be content to hold a "watching brief" for the public.

This brings us to the third function of the House of Commons, the discussion of public issues. The word "parliament" is frequently used as synonymous with House of Commons, and it has this justification that the House is the "parliament", the place of speaking. The House is the arena in which Government and Opposition conduct publicly their party strife between general elections and it is the forum, therefore, in which public attention is focussed on matters of national importance. As the members of parliament spring from and must return to the people, so the debates are directed to the education and information of the public. In the process of defending their past and present administration, the ministers are also engaged in prepar-

ing the nation for the next election. The Opposition, too, although seeking minor gains and debating points from day to day is chiefly concerned with building up its case against the Cabinet and of "educating" the public with an eye on the next appeal to the country. Over a period of months, the interested public, reading reports of parliamentary proceedings, can formulate its opinion on the merits of the Government and on the validity of the Opposition's claim to be more worthy of trust.

The authority that the Cabinet exercises both in and out of parliament is dependent upon the support it receives in the House of Commons. When it is said that a politician becomes Prime Minister because he controls the House, this means that he is the leader of a party which can rally to its support a majority of votes in that chamber. The Prime Minister chooses as his associates in the ministry men who already carry some weight among parliamentarians or have reasonable expectation of so doing. Once in office, the Cabinet may vary somewhat in its composition according to individual successes or failures of particular ministers, but as an aggregate of influential party men it continues in office so long as it retains the support of the majority in the House or until a new House of different partisan complexion is elected. In the older phrasing of the 19th century, the House controls the ministers because it may hold them responsible by turning them out of office; but under the usual conditions of modern politics it would probably be more accurate to say that the Cabinet controls the House because its supporters have a majority there. So far as concerns the primacy of the House of Commons in the parliamentary system, it makes little difference whether the position be stated as one of the House's control of the Cabinet or of the Cabinet's control of the House. In any case, the House is the centre of parliamentary authority. However, from the standpoint of ascertaining the nature and type of Cabinet power, it is necessary to inquire further into the relationship of House and Cabinet.

It must be borne constantly in mind that the influence of the Cabinet is derived from its partisanship. The Cabinet is a

committee of prominent politicians who are chosen by the leader of the majority party as his colleagues in the government of the country. The Cabinet is therefore as powerful as party discipline is rigid. It is the universal testimony of foreign as well as of Canadian observers that Canadian parties display a notable coherence and subservience to their leaders. The unity of the Government party is maintained by four factors. First, there is the bond of personal loyalty felt by all parliamentary members for their leader. A Canadian party, as has earlier been explained, is essentially a leader with a body of followers. Despite the frequent assertion of the influence of economic interests and regionalism, the fact is that parliamentary lines are not broken by the cross-voting of party members, such as is practised regularly in the American House of Representatives. Liberals and Conservatives alike, from all parts of the country, take very seriously their duty to vote constantly in support of their leaders. This is not to deny that special pressures and influences are working on the ministry behind the scenes; but in public at least it is quite the exception for a party man to take an independent course. Any candidate who accepts the party label thereby pledges himself to vote with his party unless specifically and irrevocably committed to his constituents on a particular topic. Second, there is the authority of the caucus. Every member of parliament is summoned to attend his party's caucus, a private meeting where divergent views can be aired and differences patched up. Presence at a caucus carries with it the obligation to accept the agreed party policy. The leader of a party finds it necessary to summon a caucus when his "whips", those members designated to ensure the regular parliamentary attendance and voting of his supporters, inform him of a serious threat to party unity. It was for this reason that so much attention was attracted, in May 1942, by the absence of eleven Quebec Liberals from the party caucus which had been called by the Prime Minister to hear his explanation of the Cabinet's decision to amend the regulations relating to conscription for overseas service. Forty Quebec members were said to have

supported M. Cardin, a minister who had resigned in protest against the new policy, at a private meeting of the Quebec Liberals. When only eleven rebels stayed away from the full Liberal caucus, it was evident that a major breach in the party had been checked. Third, there are what may be called the material losses of insurgency. A rebel in the ranks of the Government party will not only lose the assistance of the central party organisation at the next election and perhaps feel obliged to resign his seat if he does not retain the support of his local constituency committee, but he will also lose the immediate benefits of such patronage and influence as normally fall to a supporter of the Cabinet. While he cannot be relied on by the ministers, he may expect no favours at their hands.

Lastly, the Cabinet possesses one final weapon in its right to advise the Governor-General to dissolve parliament and send the members back to their constituents for re-election. The threat of dissolution rarely needs to be openly made; it is constantly in the minds of all members who have to consider the labour and expense of conducting another electoral campaign. Dissolution is, of course, ultimately inevitable and as the time approaches the more rebellious spirits may be expected to grow somewhat more restive. It will be hastened, however, by disunity or division in the majority party, and there is every incentive therefore for the members to assist in postponing the day of public judgment. Under normal circumstances a Cabinet which commences with a good majority in a new parliament may look forward to continuing safely in office for almost five years, and it is this condition that tends to make the five-year term the minimum life of a ministry, unless the supporters of the Cabinet experience such a decay in leadership or such bitter division in their ranks that the penalty of early election appears less than the evils of false unity. For if the majority party cannot remain united behind its ministers, dissolution will surely follow, if not at the hands of the majority leader, at least at the hands of the Opposition leader when he takes office through resignation of a Cabinet defeated in the House. Here it may be observed that a defeated

ministry or one which is in danger of defeat through desertion of its supporters may prefer to resign rather than face the voters handicapped by public knowledge of the cleavage in its ranks. Such was Sir John A. Macdonald's course in 1873 when his Conservative majority was shaken by the disclosure of the Pacific Railway scandal. On the other hand, a Liberal Prime Minister, Mr. Mackenzie King, decided on dissolution in 1926 when he was in danger of losing the necessary support of a "third party", the Progressives; but he was checked by the Governor-General's refusal of a dissolution and had no alternative but to resign. Under such circumstances, when a ministry resigns—whether defeated in parliament or not—without calling an election, it is almost certain that its successor will have to resort to dissolution in order to turn its minority party into a majority. This was done successfully by a new Liberal Prime Minister (Alexander Mackenzie) in 1874, but unsuccessfully by a new Conservative Prime Minister (Mr. Arthur Meighen) in 1926. There are, in fact, only two situations in which the House can assert its authority over the Cabinet: one is when the majority party disintegrates (as in 1873); the other when there are three or more parties and no one of them has an absolute majority (as in 1926).

In the long run, then, the fate of ministries is settled more by the verdict of the electorate (as registered in a new House) than by the will of an existing House. The consequence is that the Cabinet, which tends to dominate the House for the reasons already given, looks more to the voters as the ultimate source of its power, a position quite in harmony with democratic principles. To a considerable degree, the Prime Minister is free to choose the time of an appeal to the nation. A spirit of fair play, quite apart from the expense and effort involved, restrains him from frivolous or too frequent dissolutions. Within the limits of the maximum duration of parliament, the considerations which influence the Prime Minister are primarily political. They depend partly on the security of his parliamentary position and the possibility of its improvement and partly on the opportunities

of the day in terms of appropriate controversial issues. Some ministries have survived several dissolutions, as is indicated by the fact that the 20 parliaments before 1949 had only 17 different ministries officially designated as such. Three Conservative ministries have been brought to a close by the Prime Minister's death (Sir John Macdonald, 1891; Sir John Thompson, 1894) or retirement (Sir Robert Borden, 1920). After the first of these deaths, one Conservative ministry was clearly a stop-gap (that of Sir John Abbott, 1891-2), and after the second, the new ministry suffered internal disruption (that of Sir Mackenzie Bowell, 1894-6). Three ministries were rendered insecure by reason of a re-shuffling of partisans in a three-party House (as when the "Union" Liberals withdrew from the coalition in 1920, or when the Progressives threatened revolt against Mr. King's Liberal Government and then repudiated Mr. Meighen's Conservative ministry in 1926). But apart from these exceptional cases, the striking thing in Canadian politics is the length of a Prime Minister's tenure of power. The second Macdonald administration lasted from 1879 to 1891, Laurier's from 1896 to 1911, Borden's (reorganised as a war-time coalition in 1917) from 1911 to 1920. From 1921 to 1948 Mr. King was in office except for three months in 1926 and the five years of Mr. Bennett's administration (1930-35). From 1896 to Mr. King's retirement in 1948, some fifty-two years, there were only five different Prime Ministers in Canada. This ministerial stability is, of course, due to the political stability of the elected legislature, for the long terms of ministerial office coincide with the continued dominance of one party or the other.

To sum up, then, it may be said that the Cabinet is dependent on the House of Commons in so far as it requires a majority there. In default of such support in the House, the Cabinet may appeal to the voters to return a House with an adequate majority or it may resign and leave its opponents with the task of securing the necessary majority upon which it must rest in order to remain in power. The significance of the power of the House therefore lies in the fact that every administration requires a majority under

the system of cabinet government; but so far as "responsibility" is concerned, the Cabinet may and indeed must ultimately look beyond the House to the electorate with whom the final decision rests.

### *The Cabinet and Parliamentary Organisation and Procedure*

In accordance with British tradition, specified in Section 20 of the British North America Act, Parliament must meet at least once a year. A succession of the daily meetings, "sittings", constitute a session; and the proceedings of a session form a related whole, that is, business which is commenced on any one day can be resumed on a later day of the same session. Most legislative proceedings require several days for their completion. The passage of legislation at one sitting is rarely attempted and involves the suspension of the ordinary rules. Usually, notice of a bill has to be given one day before it is introduced (the first reading). Later on, it is debated in general terms (the second reading), and, if approved in principle, is sent to committee ("of the whole" or "select") for examination section by section. The bill is then reported back to the House and at last may pass (the third reading). After this it is sent to the Senate and, after comparable treatment there, is submitted to the Governor-General for the royal assent. (Senate amendments must be accepted by the House or the bill fails; occasionally, as with the criminal code amendments of 1947, a "free conference" of "managers" from the two Houses resolves any conflict).

A parliament extending over several years will naturally have had numerous sessions. In the early period of the Dominion, the annual session began in February, but later November was often chosen. The present tendency is to revert to February and continue until July or later. After the commencement of the recent war in 1939, the House was given exceptionally long adjournments, which, coupled with the dissolution early in 1940, resulted in its being in session no more than four months a year during 1940-42. The House itself adjourns for the shorter intervals, but a session is prorogued by the Governor-General or his deputy.



Needless to say, the summoning and prorogation of Parliament is a matter of executive discretion for which the ministry is responsible.

In their essential features, Canadian parliamentary proceedings display few marked divergencies from the British. The opening of parliament occurs with a pomp and ceremony moderately reminiscent of Westminster. On the day set for the meeting of a new parliament, the members of the two houses assemble in their respective chambers where the prescribed oath of allegiance to the King is taken. The Governor-General enters the Senate chamber and, after taking his place on the Throne, sends Black Rod (or, to give him his full title, the Gentleman Usher of the Black Rod) to summon the members of the House of Commons. As Black Rod approaches the Commons chamber, its doors are closed, not to be opened by the Sergeant-at-Arms until three knocks have been given. With due deference, Black Rod announces the Governor-General's summons and backs sedately out of the room. The Commons then proceed to the Senate chamber, only to be sent back to choose a Speaker. On return to their chamber, the Clerk points to a member who moves the election of a particular member as Speaker. When this nomination has been seconded, the Clerk puts the question and upon its being carried, the Speaker-elect is conducted to the Chair. After congratulations have been extended to him, and the Speaker's acknowledgments made to the members, the mace, as symbol of the House's authority, is placed on the table and the House is in session. An adjournment is taken until such time as the Governor-General, again in the Senate, resummons the Commons to hear the Speech from the Throne. When this has been read and the Commons are back in their own chamber --but before the Speaker formally reports the Governor-General's speech—a fictitious bill is read the first time as an indication that the House can pursue its own business before acting under royal instructions.

The first days of a session are chiefly occupied in debating a formal Address in reply to the Speech from the Throne. After

this is concluded, the House gets down to the business of interrogating the ministers on the conduct of their several departments, debating resolutions and legislative proposals, raising and appropriating money, and the discussion of those matters of public interest that the members have at heart from time to time. Day by day throughout the session the same general order of proceeding is followed. At 3 p.m. the Speaker calls the House to order and reads the prayers. Routine business is first disposed of—members raise points of privilege, correct errors in the published proceedings, present petitions for the public, receive the reports of committees, ask their questions of the ministers, and give notice of motions. The main task of the day is then proceeded with, such as the debate of legislative bills or resolutions or the review of the work of a specific administrative department. The House adjourns for dinner at six p.m. and re-assembles at eight for another two or three hour period.

Although the House of Commons is now chiefly distinguished as the place in which the political conflict between Government and Opposition is waged, there is relatively little recognition of this in the formal rules of parliamentary procedure. Members of parliament have the appearance of debating, introducing bills, and voting as independent individuals; yet everyone knows that they are most frequently acting as the spokesmen for organised parties. The lack of such recognition is due chiefly to the origin of parliamentary forms before the development of cabinet government. Nevertheless, the nature of modern party divisions has completely transformed the earlier modes of transacting business and has left them with a significance which is often merely symbolic. At the same time it must be noted that the old forms have persisted because they are eminently suited to the party strife that does occur. At any rate, today, at least, the whole of parliamentary organisation and procedure is coloured by the partisanship of the participants in the House of Commons and it is the curious combination of partisan purpose and administrative necessity that are blended together to give the distinctive

While in general, from the standpoint of the formal rules, the House is composed of equal individual members, in reality it consists of well-disciplined Government supporters and their organised opponents. There is, indeed, one obvious evidence of the party division in the House. This is to be seen in seating arrangement. Instead of sitting in alphabetical order or haphazardly as in American legislatures, the members of one party sit together. Under the influence, no doubt, of American practice, each member has a desk, but these are placed in long rows lengthwise down the chamber—there are no “cross-benches” below the “gangway” as at Westminster—so that those on one side of the House face those on the other. Ministers of the Crown occupy the first two rows at the Speaker’s right hand, these being equivalent to the “Government front bench” at Westminster. On the Speaker’s left hand sit the chiefs of the Opposition, so that they face the ministers across the central table. Alongside and behind their respective leaders sit the rank and file of party supporters—except, of course, when the majority is so large that some of its members have to sit on the Opposition side of the House. Third parties are seated farther down the chamber from the Speaker, with their leaders in the front rows as far as possible. The whole effect of this seating plan is to emphasize the clash between the “ins” and the “outs” and to bring the leaders of the opposing forces in greater proximity for debate and discussion. Since 1905, there has been a further recognition of the status of the Opposition as constituting an “alternative Government.” In order to enable its leader, who may some day become Prime Minister, to devote his full time to the political duties of his position, he has been paid a salary of \$10,000.00, equal to that of a minister and in addition to his usual emoluments as a member of parliament.<sup>1</sup> This is now embodied permanently in Section 42 of the Senate and House of Commons Act (Chapter 147 of the Revised Statutes, 1927), where he is defined as “the member occupying the recognised position of Leader of the Opposition in the House of Commons.”

<sup>1</sup>Since 1947 the Opposition Leader in the Senate also has received an additional stipend of \$4000.

The influence of the Cabinet over parliamentary proceedings is shown in five major ways: (i) the election of the Speaker; (ii) preparation of the Speech from the Throne and of the Address in Reply; (iii) the exclusive right to introduce financial resolutions; (iv) regulation of procedure; and (v) control of committees. A few words may be said about each of these to reveal the nature and extent of ministerial authority behind the forms of parliamentary business. In all of them, it need hardly be repeated, the power of the Cabinet springs from its being the ruling committee of the Government party and having at its command a majority which may be called on to vote as requested.

First, with respect to the Speaker, it is no secret that he is selected by the ministry. He is, indeed, actually proposed (contrary to British practice) by the Prime Minister and seconded by another minister. The election of the Government's nominee is usually so automatic that there is rarely any opposition to the nomination. In the conduct of his function of presiding over the House, the Speaker has remained remarkably free from partisanship, although he does not possess quite the same impartiality as his British counterpart who has almost indefinite security of tenure. The Canadian practice is that a Speaker holds office only for the duration of one parliament—there have been but two exceptions—so that a French-speaking member may alternate with an English-speaking member. The result is that the Speaker is unable to withdraw from his party as completely as the British if he wishes to continue in politics. He may attend party meetings and at a general election has to conduct a partisan campaign in his own constituency. Nevertheless, the prospect of a future return to ordinary membership has not prevented Canadian Speakers from conducting themselves with commendable impartiality. It is not his duty to attempt the "management" of the House, as American Speakers have done, nor has he fallen into the role of being a mere tool of the Government (though, contrary to English usage, the speakership is sometimes a stepping-stone to the Cabinet). But it is true that he is usually in office only while his own party has a

majority and he therefore loses some of his independence and authority. The Speaker does not preside over all sittings of the House. For the more detailed and informal consideration of bills and financial measures, the House goes into "Committee of the Whole" on a ministerial motion. The Speaker's place is then taken by the chairman of committees or deputy-speaker, who is also a nominee of the ministry (and incidentally is of the other race than the Speaker). Although the mace is placed below the table during the "committee of the whole" and the House is technically not in session, there is no practical difference. Its proceedings are reported without any break, all members may attend, and the House is really in session though under another chairman who is relieving the Speaker from his somewhat tedious task.

Second, it is thoroughly understood that the Cabinet drafts the Speech which the Governor-General reads from the Throne and that it represents a declaration of Government policy and intentions. The Address in reply, now a single paragraph of thanks and approval, is moved and seconded by two members (speaking in English and French) of the Government party. From the ministry's standpoint, the resulting debate is primarily an opportunity to test opinion and display their support.

Third, the exclusive privilege of introducing financial resolutions, although apparently connected with the Governor-General and the royal prerogative by Section 54 of the British North America Act, is an inheritance from British procedure. The purpose is to prevent members of the House who have no administrative responsibilities from attempting to seek direct appropriations for special purposes, that is, to avoid a legislative "pork-barrel" of the American type. The balancing of government receipts and expenditures is a responsibility of the ministry and the proposal of taxes or of appropriations is therefore kept strictly within the hands of the Cabinet. Needless to say, this does not prevent the ministers' seeking to gratify the desires of their supporters who have suggested, privately or otherwise, certain types of expenditures, such as construction of public

works in their constituencies. But the main thing is that the "pork-barrel", if there is to be one, should be controlled by those responsible for administration and for the raising of the money to pay for it.

Fourth, the Cabinet's control over procedure is of the greatest importance in the day to day management of parliament. There is no committee on rules (as in American legislatures) nor are the "rules" adopted at the commencement of each parliament as they are by the Houses of Congress. The procedure of the House of Commons is founded on the traditional usage of British parliamentary law where such is applicable or has not been changed by "Standing Orders". The rules are held in such high regard that they may only be suspended by unanimous consent. The Prime Minister, or any one he has designated as "Leader of the House," may, however, move the adoption of "sessional orders," such as is often done at a late stage in the session or during the war for the purpose of taking the whole time of the House for Government business. Perhaps the most noted case of the Cabinet's intervention occurred in 1913, when the Borden ministry, after five months' obstruction of its naval bill, decided to introduce the "closure". The closure puts an end to debate, and as a result of its use, a time limit can be set, at the expiration of which the subject under discussion is brought to a vote. In addition to its control over sessional orders, the Government determines the course of business, deciding when to introduce its own measures, what time to give to subjects its opponents may desire to discuss, and the chief order of each day's proceedings. This is not done without due consideration of the members of the House. The Opposition parties are consulted, sometimes through the Whips ("through the usual channels," as is said at Westminster) or more directly by personal arrangement of the Opposition leaders with the Prime Minister. To a considerable extent, therefore, the Cabinet ministers form what is known in the United States as the "steering committee" to plan the work of the legislature. This arrangement of business is "put on the record" when the Leader

of the Opposition rises in his place to ask the Prime Minister what business he proposes to proceed with in the next few days. Occasionally there are bitter disputes over procedure, especially when no arrangement has been reached amicably or when a misunderstanding occurs about such an arrangement. In these cases, the Cabinet has the last word, whether it be by insistence on its will or by offering a compromise.

Finally, there is the Cabinet's dominance in the committees of the House. The committees, whether designated as standing or special committees, do not occupy a position comparable to the American committees, nor do they serve quite the same purpose as in Britain. While the Governor-General's speech—or more properly the Address in reply thereto—is being debated at the commencement of the session, a selection committee of five members, representative of Government and Opposition parties, prepares a list of members for the standing committees. There are twelve of these, mostly consisting of thirty-five or sixty members, the largest being devoted to banking, agriculture and railways. On these committees, however, the Government possesses a majority proportionate to its strength in the House and it also names the chairmen. To these committees are sometimes delegated the detailed discussion of the most important bills (whether politically controversial or not, contrary to English usage) and the investigation of matters connected with the subjects assigned to them. The special committees are *ad hoc* bodies, with fewer than fifteen members, which may be appointed (with consultation of the Opposition) for the preparation of a special bill or for inquiry into a particular matter of public interest not coming within the ordinary scope of the standing committees. But, although useful, it must be said that Canadian committees, like the British, are overshadowed by the House's chief informal committee, the Cabinet. The evident function of the committees, standing or special, is to relieve the House of much time-consuming investigation or discussion of details. This they do to some degree. They also serve to provide an activity for eager parliamentarians. But they must not be over-

rated. The public accounts committee, which is one of the largest, being constituted annually with fifty to eighty members, was reported in 1938 as not having met for ten years. In the winter of 1938-39, this committee was at last utilised for a preliminary inquiry into the Bren Gun scandals, though the main investigation was the work of a later royal commissioner. Not all the recommendations of a committee will necessarily be accepted by the Government, either as to legislation or executive action, as is indicated by the failure of the Minister of Justice in 1942 to follow the suggestions of a select committee on the Defence of Canada Regulations respecting release of communist organisations from the ban under which they had been placed by order-in-council.

It need not be inferred from the foregoing exposition of ministerial control over parliamentary procedure and organisation that parliament is merely a "rubber-stamp" in the hands of the Cabinet. The rules of procedure do provide considerable scope—too much in the opinion of many people—for members of parliament to express their views, criticise the ministers and urge their pet schemes. A member has numerous opportunities to make himself heard and the Opposition party as a group has its turn daily throughout the session. The private member who "catches the Speaker's eye" (particularly if he is on the list prepared by the party whips) may speak once on any subject he chooses during the debate on the Address. At each of the successive stages of proceedings on resolutions and bills he may also take his forty minutes, unless the closure is to be applied or unless a twenty-minute limit is enforced. He may harass the ministers with a stream of questions requiring lengthy and expensive answers (though the "question hour" is not as significant as at Westminster and most answers are "tabled" as "returns," many of which are not printed). If on a committee which has business before it, he will find a chance to interrogate witnesses, whether ministers, officials or representatives of the public, and may perhaps have a hand in drafting the report. He may also attempt to introduce "public bills," though with less chance of seeing them pass the House than if he sponsors "private



bills" relating to some special corporation. The loquacity of some "back-benchers," as those behind the front rows are called, is notorious. This is somewhat encouraged by the extensive space of a chamber filled with desks, a physical feature which tends to preserve an oratorical style which serves no useful purpose. There is constant complaint at the reading of speeches which are obviously prepared for distribution in the constituencies rather than for influence in House business. Nevertheless, a member who makes his points briefly and with reasonable soundness and lucidity will undoubtedly come to carry weight with the rest of the House. In general it may be said that the House is less distracted and appears more dignified than comparable American chambers which admit outsiders to the floor and are in constant commotion.

The chief display of parliamentary independence is, of course, shown by the Opposition members. Private members have, as a last resort, the right to vote at various stages of parliamentary proceedings, though the invocation of this right comes either from the Government's initiative when it desires approval of a resolution and passage of its measures or from the counter-moves of the Opposition. It is the members in the Opposition ranks who formally move amendments to the Address, financial resolutions and government bills. The Leader of the Opposition, in particular, has the right to move a vote of want of confidence in the Cabinet. There are indeed many opportunities for the Opposition to "divide" the House (that is to force a vote, which is taken at the request of five members) by recording the members standing at their seats as the Yeas and Nays are called for. But as parliamentary time is chiefly spent in debate, the House is not put to a "division" as often as might be expected. The reason for this has already been indicated. The Opposition leaders know they cannot prevail by numbers against the Government majority. Their aim is to wring such concessions as they can from the ministers and to put on the record their criticisms and views as events transpire or subjects come up for discussion. As already stated, the hope of the Opposition is

centred on the future when the electorate will have its sovereign opportunity of turning out the Government and of putting them in as the "alternative Government."

#### FOR FURTHER READING:

The older volumes of Sir John Bourinot, *Parliamentary Government in Canada* (1916) and E. Porritt, *The Evolution of the Dominion of Canada* (1918) are now superseded by R. MacG. Dawson, *The Government of Canada* (1948), Pt. V.

So far as concerns the legislative powers of the King and Governor-General, chief attention has been centred on the crisis of 1926, for which R. MacG. Dawson, *Constitutional Issues in Canada, 1900-31* (1933), has much material in Chapters II and III. The general aspects of that occasion have been dealt with in numerous treatises on Dominion Status—briefly in H. V. Evatt, *The King and His Dominion Governors* (1938), especially Chapter VII, and more comprehensively in E. A. Forsey, *The Royal Power of Dissolution of Parliament in the British Commonwealth* (1943).

There are two books about the Senate: Sir George Ross, *The Senate of Canada* (1914), largely devoted to federal aspects, and R. A. Mackay, *The Unreformed Senate of Canada* (1926), a careful study of its composition and influence. See also Dawson, *op. cit.*, Chapter V; and E. A. Forsey, "Appointment of Extra Senators under Section 26 of the B.N.A. Act," *Canadian Journal of Economics and Political Science*, Vol. XII (1946), pp. 159-67. There is no comparable study of the House of Commons. Representative materials may be found in Dawson, *Con. Iss.*, Chapters III (part ii) and IV. The authoritative work on parliamentary procedure is still Sir John Bourinot's *Parliamentary Procedure and Practice in the Dominion of Canada* (4th ed., 1916), with which must be used the annotated rules prepared by A. Beauchesne, *Rules and Forms of the House of Commons of Canada* (3rd ed., 1943). Comparative treatment will be found in Corry's *Democratic Government and Politics*, Chapter V, and Brady's *Democracy in the Dominions*, Ch. IV.

The statutes of the Dominion are published annually; occasionally collections are made as *Revised Statutes*, the last being compiled in 1927. The individual Acts are also printed separately and, for those on important subjects, there are "office" revisions containing all amendments to date. Parliamentary proceedings are recorded separately in the *Journals* and *Debates* of each house. Some parliamentary papers are published in the *Journals*, but the lengthier committee reports, all of which used to be bound as *Sessional Papers* before 1934, are now only issued separately. Many documents that are "tabled" in the House are not printed at all.

For journalistic descriptions of the parliamentary scene, see L. Roberts, *So This is Ottawa* (1933) and A. F. Cross, *The People's Mouths* (1943).

The quotation on p. 126 is from R. MacG. Dawson, *The Principle of Official Independence* (1922), p. 250. That on p. 134 is from an article by F. R. Scott in the *Canadian Forum*, Vol. XIX (1940), p. 340.

## CHAPTER VI

### THE ADMINISTRATION OF THE DOMINION OF CANADA

#### *The Crown In Canada*

The administration of a country is rarely conducted in the name of the legislature that makes laws and raises the revenue for their enforcement. Even in a parliamentary system where the real executive authority is controlled by cabinet ministers who are members of parliament, the administration is carried on in the name of the head of the state. In Canada the head of the state is a King. The red post-office vehicles bear upon them the old inscription, Royal Mail; the most modern fighting service is designated as the Royal Canadian Air Force; justice is dispensed in royal courts; even public lands are known as Crown lands. The government is officially styled "His Majesty's Government in Canada."

The monarchy in Canada has both a traditional and a statutory foundation. Section 9 of the British North America Act of 1867 declared that "the executive government and authority of and over Canada" should "continue and be vested in the Queen." The queen referred to was not called Queen Victoria of Canada, nor is the present king, King George VI of Canada. Section 2 of the Act specified that "the provisions of this Act referring to Her Majesty the Queen extend also to the heirs and successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland." From 1927 to the change to be noted later, the royal style was "King of Great Britain, Ireland, and the British Dominions Beyond the Seas, Defender of the Faith, Emperor of India." Officially, therefore, Canada possesses a monarchical form of government but is not a

separate kingdom. The same King is acknowledged as reigns elsewhere in the British Commonwealth of Nations and Empire, and in his title Canada remains anonymous among the "British Dominions Beyond the Seas," a term embracing territories and countries in all stages of colonial dependence or dominion autonomy. This situation is the product of a lengthy historical development which commenced when the regions now comprised within Canada were first acquired in the name of the King of England (or of Great Britain as he became in 1707 and of the United Kingdom of Great Britain and Ireland in 1801) by discovery and settlement or conquest and cession.

Although the British monarchy was continued in Canada by the British North America Act of 1867, its constitutional evolution did not cease with the establishment of the Dominion. Sixty years later, the recognition of Dominion Status was understood to have resulted in the creation of half a dozen separate countries that were practically independent kingdoms within the British Commonwealth though sharing the same King. The very fact that the common monarchy is shared by the members of the British Commonwealth whose free association it symbolises, implies that all of them now have an equal interest in its nature and control. The Statute of Westminster, 1931, in recording this, recited in its preamble that "any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall thereafter require the assent as well of the parliaments of all the Dominions as of the Parliament of the United Kingdom." On the common aspects of the kingship, therefore Canadian action is required. This was first clearly displayed at the abdication of King Edward VIII in 1936. A Canadian order-in-council (i.e. an executive order of the Governor-General and his Canadian ministers) gave Canada's assent to the (British) abdication act of December 10, 1936 and later, when parliament was in session, a special Canadian act was passed to validate retroactively for Canada this change of succession. Whether necessary or not (as some lawyers have disputed under Section 2 of the British North America Act of 1867), it was evidently designed to display

Canada's equality with Britain in the Commonwealth and to indicate the Canadian aspect of the monarchy. In 1947, too, when Britain's withdrawal from India led to dropping the phrase "Emperor of India" from the royal style, Canadian legislation was also forthcoming concurrently with the British.

But there is another phase of this common monarchy. Regardless of the theoretical unity of the Crown, the emblem of royal authority, so far as Canadian government is concerned the monarchy is now almost entirely a Canadian concept or institution. The (British) Regency Act of 1937, for instance, does not apply to the sovereign with respect to Canada. A further indication of the separateness of the Canadian kingship is to be found in the divergence of Canadian and British declarations of war in September, 1939. The British proclamation of a state of war was made by the King on September 3; the Canadian declaration was not issued until September 10, when a Canadian order-in-council was cabled to London for His Majesty's approval. Until this latter date, therefore, the King, so far as Canada was concerned, was not at war with Germany.

Whatever may be the traditional legal theory of the kingship, the actual position is quite clear. The formal source of executive authority in Canada is the British Crown; but when the royal power is invoked for any Canadian purpose, its exercise is quite separate and distinct from its use in Britain or in any other British territory. Thus, although he is not styled King of Canada, whenever he acts for Canada, the King has every appearance of acting as King of Canada. This Canadianisation of the Crown has been made possible by the ancient English dogma that "the King can do no wrong," a dogma that is accompanied by a correlative principle that when he acts he must do so in accordance with law and on the advice of responsible ministers. Today it is firmly established as a basic constitutional principle that, so far as relates to Canada, the King is regulated by Canadian law and must act only on the advice and responsibility of Canadian ministers. Thus in 1936, when Edward VIII proceeded to France to unveil the Canadian war

memorial at Vimy Ridge, he was attended only by a Canadian minister. Similarly in 1939, during the royal progress of George VI through Canada, he was not accompanied by any British ministers, but was entirely in the charge of his Canadian advisers. For legal purposes, too, on that visit, the (Canadian) Seals Act of 1939<sup>1</sup>, designated the Great Seal of Canada (as used by the Governor-General) as a royal seal and authorized the King, when outside the country, to use any other seal he might specify for Canadian purposes. This will eliminate for the future any necessity for relying upon British seals and forms (which are, of course, in the custody of British officials).

The importance of the Crown in Canadian government lies neither in its function as a symbol of Canada's association with the other members of the British Commonwealth of Nations nor in the part which the King plays personally in Canadian affairs. Its significance is to be found in its role as a legal concept or function as the repository of executive authority in the Dominion. It is impossible to specify exactly what powers may be attributed to the Crown, for they are as varied and extensive as the functions of government itself. Some of these powers are derived from statutes which authorize the King or his agents to perform numerous actions in certain ways; others, more elusive, spring from the ancient common law rights of the King, the "prerogative," so far as it has not been restricted or directed by legislation. But in all this the King has really very little part. On a unique occasion such as the royal visit to Canada in 1939 he may assume the same personal role in the Dominion that he holds in Great Britain, but apart from exceptional events the King has few opportunities for giving his personal consent to the use of the prerogatives that are still attributed to him. This is not entirely due to his absence from the country, for he is constantly accessible to the Canadian High Commissioner in London and to Canadian ministers whose journeys to Britain are of increasing frequency. The diminution of the King's personal intervention, at the very time when the Crown "with respect to Canada" has become so

<sup>1</sup>Appendix, p. 344.

evidently a basis of Canadian independent status, is mostly the result of the interposition of another agent between the sovereign and his Canadian ministers. Although all royal prerogatives had not been formally delegated to the Governor-General before 1947, the few that had not been were largely fallen into disuse (as with the veto of Dominion legislation) or were capable of manipulation in some other fashion. At any rate, the necessity for referring certain matters back to the King at Westminster has now been almost eliminated by new Letters Patent issued in 1947. Before that the Governor-General was authorised "to do and execute, in due manner, all things that shall belong to his office" under the British North America Act. Today he is also empowered "to exercise all powers and authorities lawfully belonging to Us [the King] in respect of Canada."

The chief distinctive occasion requiring the King's personal action seems to be that of the appointment of the Governor-General. The selection of the Governor-General is, of course, determined by the advice of the Canadian ministers; but the appointment is effected by a royal commission bearing the King's sign-manual or signature and the counter-signature of the Canadian Prime Minister<sup>1</sup>. The principles governing this action were formulated at the Imperial Conference of 1930 and are worthy of quotation:

- "1. The parties interested in the appointment of a Governor-General of a Dominion are His Majesty the King, whose representative he is, and the Dominion concerned.
2. The constitutional practice that His Majesty acts on the advice of responsible Ministers applies also in this instance.
3. The Ministers who tender and are responsible for such advice are His Majesty's Ministers in the Dominion concerned.
4. The Ministers concerned tender their formal advice after informal consultation with His Majesty.

<sup>1</sup>Appendix, p. 355.

5. The channel of communication between His Majesty and the Government of any Dominion is a matter solely concerning His Majesty and such Government.
6. The manner in which the instrument containing the Governor-General's appointment should reflect the principles set forth above is a matter in regard to which His Majesty is advised by His Ministers in the Dominion concerned."

The Governor-General is the King's personal representative in Canada. In the every day practice of Canadian government he is, if not the living image of the King, at least the physical embodiment of the Crown and a "double" or substitute for the sovereign. Nevertheless, even apart from some legal differences between the King and the Governor-General, the latter suffers from some very real handicaps. Although professing to be a personal representative, the Governor-General is not actually the King's own choice, he is the nominee of the Canadian ministry. The ministers possess therefore a far greater influence as to the personality of the Governor-General than they or the British ministers do with respect to that of the King who attains his royal station by inheritance. The Governor-General has no permanent or family interest in the office; he holds his place by usage for five years, and although this has occasionally been extended, as during the recent war for the Earl of Athlone (1940-45), the very fact of such extensions indicates the transitory nature of this post. Incidentally, it may be stated that there is no legal provision respecting age, nationality, experience or term of office. The post is usually conferred on a resident of the British Isles, often a member of the royal family, who is a peer or is raised to the peerage on appointment, as was Mr. John Buchan, created Lord Tweedsmuir in 1935. Since 1905 the letters patent establishing the office have named the Chief Justice of Canada as Administrator or acting Governor-General in case of disability of the occupant of the office, an admirable provision, as Lord Tweedsmuir's death in war-time (1940) revealed.



The Governor-General lives in semi-regal style at Rideau Hall, Ottawa. His salary of £10,000 (as set by Section 105 of the British North America Act "unless altered by the Parliament of Canada") and the expenses of his Secretary's office (\$130,971.00 in 1941) are borne by Canada. This is a surprisingly small cost for a country seeking to maintain monarchical forms. (Canada, it must be stated, bears no share in the financial maintenance of the monarchy so far as the King is concerned; the one expense incurred was that of the royal visit of 1939). There appears to be little or no demand for the appointment of a Canadian to the office of Governor-General. It seems generally recognised that it would be inadvisable to permit an office which is admittedly symbolic rather than influential to become a reward for partisan services, as might easily occur if Canadians became eligible. Those who are critical of the social consequences of the trappings of monarchy have proposed that, since the duties are increasingly formal, the purely formal and technical duties of the office might well be attached permanently to the post of Chief Justice.

Whether the Governor-General is or is not, in strict law a true viceroy with full regal powers, he really does possess this status in fact. For all practical purposes the powers of the Crown are exercised through him as if he were the King. It is needless, therefore, to attempt to distinguish between powers that the Governor-General draws from his royal commission of appointment, from British statutes (which since 1931 are restricted to the British North America Act 1867 and its amendments), or from Canadian legislation. The general effect of all these is to make him nominally the formal agent for the Crown's executive authority in Canada. Far more important than the types of authority or their source is the method of their exercise.

### *The Privy Council and Ministry*

In the course of bringing the authority of the Crown into operation in Canadian government, the Governor-General—like the King—must perform his constitutional duties according

to specific legal formalities as well as with the political responsibility of his ministers. The distinctive indication of an official exercise of the power of the Crown is the issuance of a document, whether proclamation, appointment or order, under a special seal. The original Great Seal of Canada for the use of the Governor-General was first issued under royal warrant in 1868; a new one was authorised in 1921. In 1939, the King, who had previously been under the necessity of using British seals, was also authorised to use the Great Seal of Canada and such others as he might specify. The Great Seal is kept in Canada, and to use it the Governor-General needs the advice of a minister whose countersignature provides the legal responsibility, while the approval of the Cabinet as "The Committee of the Privy Council" establishes the political authorisation.

The Canadian Privy Council is established by Section 11 of the British North America Act of 1867 in the following words: "There shall be a Council to aid and advise on the Government of Canada, to be styled the Queen's Privy Council for Canada." This was not then the sole privy council with legal authority in Canada. Several references are made in the Act to "Her Majesty's Most Honourable Privy Council," by which was meant the British Privy Council (as in Section 3 for the proclamation of the Dominion and Section 146 for the admission of other colonies or provinces). Today, however, the intervention of the British Privy Council is unnecessary and indeed would be considered totally unconstitutional, as is implied by the Balfour Report of 1926 that "it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs." Prior to this declaration, not only was the King subject to advice on Canadian affairs by British ministers, but the Governor-General was also directed by instructions from the British Secretary of State for the Colonies, whose nominee he was. The duality of ministerial advice, British and Canadian, caused many serious constitutional difficulties, but it has been completely ended; the Governor-General "is not the representative or agent of His Majesty's Government in Great Britain or of any Depart-

ment in that Government." He is, as has been seen, appointed on the exclusive advice of Canadian ministers and receives his instructions at their behest. He has not even a connection with the British Dominions (now "Commonwealth") Office which deals only with the Canadian Department of External Affairs.

His Majesty's Privy Council for Canada is thus the sole body of advisers for the Crown with respect to the Dominion of Canada. It is composed of some eighty or more gentlemen who have been appointed for life at various times by the Governor-General on the advice of the Prime Minister of the day. There are no statutory qualifications beyond taking an oath specified in the fifth schedule of the Act of 1867. Privy councillors receive no salaries, but they are entitled to the style "Honourable" before their names (a dozen of the present councillors are styled "Right Honourable" by virtue of also being British privy councillors). Practically all the councillors have been appointed in order that they might accept ministerial posts under the Crown in Canada, though the honour has also been conferred on visiting Australian and British prime ministers, the Duke of Windsor (when Prince of Wales, 1927), the Chief Justice of Canada, the Canadian High Commissioner in London, and a few other distinguished gentlemen. Privy councillors do not resign from the Council when they leave their ministerial posts, but, like other non-ministerial councillors, are not summoned to any meetings. Indeed, the full Privy Council has only held one meeting. All its functions are performed by the "Committee" which is composed of the ministers actually in the Cabinet. The legal quorum for such formal action of the Council is set at four, and it is this small quorum which officially gives the Council's authority to acts, orders, or proclamations of the Privy Council. The Governor-General does not attend the meetings of this quorum (as the King may those of his Privy Council at Westminster), but receives its proceedings later at his office for validation by seal and signature.

The active part of the Council for administrative purposes is

the "Committee," the group of councillors upon whose advice the powers of the Crown are exercised. The Committee is nothing other than the Cabinet in its legal aspect. On its political side, the Cabinet is composed of those parliamentary leaders who are associated together to assume direction and responsibility for the conduct of government; for formal purposes these parliamentarians are privy councillors who as ministers have the legal capacity to carry out Crown functions. As a committee of the Council they are presided over by the President of the Council and the minutes are recorded by the Clerk; as a Cabinet they sit with the Prime Minister as chairman, with no record kept; as parliamentarians, of course, all but one or two who may be senators sit in the House of Commons. Since 1891 it has been the practice for the Prime Minister to serve as President of the Council, though this is not necessary. In 1943 the Clerk of the Privy Council (a non-ministerial officer) was also appointed to the new position of "secretary" to the Cabinet.

An interesting example of the constitutional relationship of ministers to the Council was revealed in 1926. After Mr. King's Cabinet resigned on June 28, when refused a dissolution, the Governor-General summoned Mr. Meighen to form a ministry. It will be recalled that (before 1931) acceptance of a ministerial post necessitated the recipient's re-election to parliament. As the session was drawing to a close and Mr. Meighen was not sure of securing the confidence of the House, it was decided that he alone should actually take a departmental office post and thereby lose his parliamentary seat. His colleagues in the Cabinet—all but one being already privy councillors—were not sworn in as ministers, but were designated as "acting" ministers, so that they might retain their seats. The House refused to accept the administration of such an "acting ministry", of which the chief minister was no longer in parliament and the rest not specifically in charge of departments, and on July 2nd passed a vote of want of confidence in the Government. The dissolution of parliament was thus forced, and in the ensuing election the Cabinet of "acting ministers" was defeated. This

episode has often been interpreted as implying that privy councillors have no status for ministerial purposes unless specially designated and sworn as ministers of departments. It also reveals that a ministry will probably not be acceptable to the House of Commons unless an adequate number of them are members of the House and of the Committee of the Council. It is possible, however, for a privy councillor to be a minister even while temporarily not a member of parliament. For example, during the military reinforcements crisis of November, 1944, General McNaughton became minister of national defence, but on failure to secure a seat in parliament had to resign six months later.<sup>1</sup>

Despite the general principle that the authority of the Crown must be exercised on the advice of responsible ministers, there is frequent discussion of the Governor-General's right to use his own discretion. The opportunities for this are now quite rare and arise only in exceptional circumstances, but they are of sufficient importance to justify some consideration. In the past the problem of the Governor-General's discretion was usually debated as if it were an accompaniment of Canada's colonial status. Before the attainment of Dominion status, the Governor-General was not only authorized by his royal commission and encouraged by his instructions from the British ministers to follow his own judgment on certain points, but was even described in the British North America Act as acting for certain purposes "according to his discretion" (as in Section 55 on the reservation of bills). A lengthy controversy was subsequently conducted not only with regard to reservation, but also Senate appointments, pardon, dissolution of parliament, and disallowance of provincial legislation. The Canadian ministers naturally sought to control all phases of the Governor-General's authority and early imagined that this could be accomplished by excluding all British ministerial advice. The constitutional crisis

<sup>1</sup>The McNaughton case is exceptional in another respect. During the crisis the minister, though not an elected member of parliament, was permitted to appear in the House and participate in the special discussions (and in a "secret session").

of 1926, involving dissolution, indicated that the issue is not one of "colonial" status, but is essentially one of the "reserve" powers of the Crown. When the Imperial Conference of 1926 defined Dominion Status, it contributed little to the settlement of this question, except in so far as the analogy between the Governor-General and the King was stressed. The Governor-General holds, it was declared, "in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain." But does the King have any discretion in Britain? Opinion is divided. There is no precedent in the past hundred years for a monarch's rejection of his minister's advice with regard, say, to the dissolution of parliament. This does not mean, however, that it could not be exercised; it is simply a statement that there has been no such use for a century or more.

The standard view of royal discretion is that the question hinges on the Crown's successful chance of finding ministers with parliamentary support who will take responsibility for the government. Thus, in Canada in 1926, when Lord Byng rejected Mr. King's request for a dissolution, his bad judgment in inviting the leader of the Opposition to form a ministry was shown by the latter's defeat in the House. On the other hand, in Britain in 1931, George V, after consulting the Opposition leaders, had good grounds for continuing Mr. MacDonald in office, even though his cabinet had split and his party support collapsed, for he did secure a parliamentary majority from other sources. In 1936, however, at the time of the royal marriage crisis in Britain, Edward VIII, having no alternative ministry to appeal to, had but two choices: to accept Mr. Baldwin's advice or to abdicate, and he chose the latter. Later, in 1939 in South Africa, when the issue of war or neutrality divided the Cabinet, the Governor-General (a South African appointed on the advice of the Prime Minister, General Hertzog) would appear to have been justified in refusing a dissolution to General Hertzog and in calling on the leader of the majority in the Cabinet who clearly possessed parliamentary support, as the vote against neutrality showed.

Opinions on the subject of the "reserve" power of the Crown tend to fall into two categories—which may be called the "guardian" and "rubber-stamp" schools. In the first view, the King or his representative is regarded as possessing this discretionary authority in order to protect the country against unconstitutional, malicious or vindictive conduct (whether personal or partisan) on the part of a prime minister; the second, an anti-monarchist sentiment, would leave the Crown completely under the thumb of the prime minister as representative of the people. Neither of these views is without difficulties. Parliamentary government does rest, ultimately, on the acquiescence of parliamentarians in certain standards of conduct and propriety which at times ambitious leaders may be tempted to disregard. On the other hand, there is always the possibility that both King (or Governor-General) and the Prime Minister may together be inclined to connive at unconstitutional practices. No automatic protection can be afforded a constitutional system which both Crown and majority leader of the people conspire to destroy. There is, however, less danger of this when each is aware that the other has rights and duties that have to be reckoned with. The full circumstances of such constitutional crises are rarely known publicly at the time. The entire story of negotiations and conditions does not come out until years later. Few students of the constitutional system go so far as to deny that there is some degree of discretionary or reserve power occasionally capable of exercise. That its need is felt even by extreme republicans is indicated by the careful provisions made for the President's discretion in the Irish constitution of 1937.

The standard example of royal discretion is that of the appointment of the Prime Minister. Usually, of course, there is no choice, for one parliamentary leader alone possesses a parliamentary majority. But at a sudden change of party leadership or when a third party holds the balance of power in the legislature, the royal discretion has clearly some opportunity for exercise. There are quite evidently a few simple rules about which there can be little doubt. When there is a conflict between the King or Governor-General and his Prime Minister, if the

former does not give way or withdraw (as did the Irish Governor-General in 1935 and King Edward in 1936), the latter must resign and permit the Crown an opportunity to invoke the advice of a minister who will accept responsibility for his own appointment and for the circumstances of his predecessor's resignation. Thus in Canada in 1926, although Mr. Meighen, as Mr. King's successor, seemed to rely largely on the Governor-General's personal discretion as justification, he did actually have to assume responsibility for the situation and had to accept the consequences for the Governor-General's misjudgment and his own miscalculation in taking office.

In the last resort, in any case, there is a final appeal to the electorate. This is the ultimate test. It is the right and duty of the King or his representative to possess a Prime Minister who can carry on the government with the confidence of the House of Commons. If he misjudges the parliamentary situation (as Lord Byng did in 1926), his chosen Prime Minister must appeal to the electorate to return a parliamentary majority. Whether the appeal to the country is undertaken by a new minister or by an old one is of relatively little importance so long as the verdict of the nation is sought in the long run. It is for this reason that the other noted Canadian dispute of 1896 stands in quite a different category from that of 1926. On the earlier occasion Lord Aberdeen refused to approve Sir Charles Tupper's last-minute appointments after an electoral defeat. For many years thereafter, during the "colonial" stage in which discretionary powers were apt to be confused with "British" intervention, opinion generally condemned the Governor-General for his stand. Today, however, his refusal may be considered as more justifiable, for a government defeated at the polls does not possess full advisory powers. On the other hand, a refusal of dissolution, even if the request appears to be intended to evade a possible parliamentary vote of censure as in 1926, can only be justified when there are certain prior conditions or other political circumstances. Decision in this case is a matter of judgment rather than of constitutional rules. If a Prime Minister resigns on such



a refusal, the success of a new minister in gaining parliamentary confidence or his later electoral victory would automatically confirm the wisdom of the Governor-General's course of action.

Although it may be argued that the present doubt as to the constitutionality of the reserve power of the Crown, especially so far as dissolution is concerned, flows from a transitional stage in cabinet government—a stage between responsibility to parliament and responsibility to the electorate—the fact is that the Prime Minister is not directly elected by the people; his position still comes from having or winning a majority in parliament. And although the direct election of a ministry may be more in harmony with the current democratic tendencies, it possesses the dangers as well as the merits of the logical democratic process.

### *The Political Aspects of the Cabinet*

In the preceding account of the relation of the Canadian ministers to the Crown it has been implied that while the ministers as a "Committee of the Council" have collective charge of the use of Crown authority, it is the Prime Minister who conducts their political relations with the King or Governor-General. There is no such thing as the ministers giving their advice collectively on political matters except through the medium of the Prime Minister. This procedure was devised more than two hundred years ago in Britain as a mode of excluding the personal intervention of the monarch in the politics of the Cabinet; its effect today is to further the concentration of power in the hands of one man, the first minister. The Governor-General knows the nature and result of cabinet deliberations only so far as they are reported to him by the Prime Minister, and the extent to which the latter reveals divisions in the ministry is a matter of his judgment and frankness. If this discretion on the Prime Minister's part may permit him to desert his colleagues or to misrepresent them, it also protects them against an outside disruption.

The present importance of the Prime Minister comes from his position as the leader of a national party which possesses a majority in parliament. It is for this reason that he is invited

by the Governor-General to form a ministry and it explains why the Governor-General has rarely any choice in making the appointment of a Prime Minister. So important and well-recognised is the national party leadership that, in 1925 and again in 1945, the Prime Minister (Mr. King), who had secured the dissolution but had met defeat in his own constituency, was allowed to continue in office although he had to sit in the gallery of the House of Commons until another seat could be found. In the past, too, when a Prime Minister died (as Sir John Macdonald in 1891 and Sir John Thompson in 1894) or retired on account of age or ill health (as did Sir John Abbott in 1892 and Sir Robert Borden in 1920), the parliamentary caucus or small party council immediately selected a new leader. Today, however, if a similar selection occurred and was not confirmed by a national party conference, the new Prime Minister would undoubtedly find it necessary to resign his office to the new leader of the national party. Since 1867 there has been no case of a dismissal of a Prime Minister by the Governor-General, and though Lord Dufferin is said to have considered this action in 1873, it is unconfirmed by any official evidence. The two cases where the Governor-General came into the picture were those of Sir Charles Tupper's hastened resignation in 1896 when he could not get his post-election appointments confirmed and Mr. King's resignation in 1926 in the noted crisis of that year. On one occasion (1873), Sir John Macdonald resigned rather than face parliament on the Pacific scandal; on another (1896), Sir Mackenzie Bowell resigned when his ministry broke up as a result of internal discords. In 1948 Mr. King did not retire until the Liberal convention had selected Mr. St. Laurent as his successor.

Whatever the cause or circumstances of the appointment of a new Prime Minister, he has the right to name his colleagues in the administration. The whole Cabinet retires with the outgoing Prime Minister and the new appointee has therefore a free hand in the selection of the new Cabinet as political necessity indicates—from his own party or, in the case of a coalition (as in 1917), from supporting groups. The Prime

Minister is thus "first minister" in point of time as well as of importance; his status is now recognised by statute where it is defined as the minister of "the King's Privy Council holding the recognised position of First Minister." Members of the Cabinet, it is perhaps needless to state, are chosen primarily for political reasons and less for administrative capacity or special knowledge of the departmental duties they will assume. This political aspect of ministerial appointments is a basic necessity both for the maintenance of parliamentary responsibility under the British type of cabinet government and for the retention of final control by politicians in a democracy—as is recognised in the United States where cabinet members, though not members of either house of Congress, are laymen rather than experts in administration.

The considerations that the Prime Minister has to bear in mind in constructing his Cabinet are varied and numerous—e.g., the desirability of having in it a senator who can "lead" the upper chamber and manage Government business there, the necessity for rewarding the most powerful parliamentary supporters of the party, the advisability of including provincial leaders whose local influence is important to the party, and the expectation of certain special groups that their interests will be protected. Perhaps the chief consideration is that of the federal and racial distribution of Cabinet posts. Ever since the first Macdonald ministry of 1867 the province of Quebec has been regarded as entitled to three French ministers and one English. To balance this Ontario is accordingly given at least four ministers, and there was considerable complaint when Mr. King's Cabinet of 1925 had only two. There is usually a non-French Catholic (preferably Irish and from Ontario) and one representing the French outside Quebec. Every other province likewise expects to receive at least one Cabinet appointment. Failure to provide this provincial or racial distribution was the subject of severe criticism of the second Borden Cabinet in 1917-20. Mr. King, as leader of the Liberal party which has long been the protector of provincial rights, at first sought to maintain the

federal aspect of his Cabinets, so that Ontario and Quebec would be evenly balanced and every other province represented, but this has not always been possible. Finally, in distributing the ministerial posts among his Cabinet members, the Prime Minister is influenced—in addition to his own and the ministers' personal desires—by some more elusive pressures. It is said that the financial interests of Toronto and Montreal have often specified who would be acceptable to them as Minister of Finance. The ministries of Agriculture and Immigration (when the latter existed) have usually been assigned to westerners, just as the ministry of Fisheries is allotted to an appointee from the maritime provinces. The Post Office and Public Works are now often under French ministers. In 1941 the appointment of a new Minister of Labour was regarded as commendable largely because the appointee was said to be approved by certain sections of organised labour. The Minister of Justice is usually a lawyer of distinction, but similar professional standing is never considered requisite for any other post.

The result of such a federalisation is that the Cabinet does not necessarily represent the quintessence of party capacity so far as political wisdom and parliamentary experience can be found, but rather the heterogeneous collection of sectional representatives and leaders of the majority party. In this respect, the "American" consequences of regionalism are apparent. That it works effectively, however, must be admitted, especially in view of the nature of Canadian parties, their lack of theoretical principles, and the type of supporters they rely on. Yet it must be admitted that such a composite administrative body undoubtedly encourages delay in the formulation of constructive purposes while promoting compromise and conciliation in policy. At the same time, too, the very heterogeneity of membership, bound together as it is chiefly by the party name and loyalty to the leader, tends to strengthen the Prime Minister's role as arbiter of government policy. The Canadian Prime Minister has a wider range of men to select from than he would have if all were bound by recognised party principles, platform or policy, though the pro-

cess of distributing the members over the country in a federal or sectional manner carries with it the further consequence that many of his colleagues are not rated as national leaders of the party, and some of the outstanding men have to be disregarded. It is no wonder, therefore, that the Prime Minister, the one minister with a "national" claim, overshadows the rest. In the task of driving such a mixed team, it appears that his greatest difficulty is persuading the numerous sectionally-minded politicians to accept a common goal.

The moment its members are selected, the Cabinet begins to play its multiple role in relation to Crown, administration, parliament and public. On the legal side, as has been explained, the Cabinet assumes the status of the "Committee" of the Privy Council for formal advice to the Crown and the ministers commence to exercise their special administrative duties according to law. On the political side, the Cabinet displays its partisan complexion as the group of politicians aiding the national leader of the majority party in parliament. In its largest constitutional aspects, however, the Cabinet is revealed as the body of parliamentarians who possess the confidence of the House of Commons for the conduct of government. As Bagehot said long ago, the Cabinet is the link that joins executive and legislative branches of the constitutional machinery; it is the device by which public will is transmitted into administrative action. The Cabinet has therefore to keep its finger on the pulse of public opinion, maintain its party organisation, manage parliament, and supervise the details of government. Much of its time must be devoted to purely political and partisan considerations as to the retention of influence with its followers in parliament and throughout the country. At the same time, its regular tasks as an executive committee will necessarily extend from decisions respecting relations with other countries to the settlement of internal questions of administrative convenience. The Cabinet is not itself an administrative body; its will is carried out in the numerous government departments by the several ministers, each of whom normally takes charge of one or more administrative agencies

or groups of agencies. The primary function of the Cabinet is to determine the major lines of policy to be followed by the government. In carrying them out it utilises, of course, its parliamentary majority for the passage of whatever new legislation is required to implement the agreed programme and it employs the services of the permanent departments for their enforcement.

The Cabinet meets almost daily during parliamentary sessions and probably weekly during the rest of the year. Until 1945 no record was kept of Cabinet deliberations; though the conclusions arrived at may be disclosed to the press, announced in parliament, or recorded through the formal orders of the Privy Council. All ministers are brought under the operation of the traditional rules of unity, secrecy and joint responsibility. No member is free to reveal the nature of Cabinet discussions or the extent of divisions of opinion. However divergent their views, ministers are expected to confine the public expression of their sentiments on political affairs to the general lines of Cabinet policy and, where a specific course of action has been agreed on, every member is under obligation to join in its defence. It is a cardinal principle of the cabinet system that the ministers present a united front against the critics of the Government, and accept responsibility jointly for all its major decisions and actions. If a minister cannot acquiesce in a certain policy, he has the right to resign, whereupon he may explain to his constituents and to parliament the grounds of his disagreement with his colleagues—but without disclosing Cabinet proceedings or secrets unless special permission is given. Such resignations are not very frequent for they occur only when some exceptionally controversial matter of principle is involved, as was the case with the Manitoba school question of the 1890's or with conscription in war. An example was provided by the resignation of M. Cardin, Minister of Public Works, in 1942, when he could not concur in a government bill authorising the extension of compulsory military service beyond Canadian frontiers. No action was actually taken under the provisions of that Act at that time, but at the close of 1944 the

Minister of National Defence (Col. Ralston) insisted that the time had come to utilise the non-volunteering conscripts as European reinforcements. There ensued a serious Cabinet crisis that for a time looked as if it would split both the Cabinet and the Liberal party. Mr. Ralston left the ministry on November 4, 1944, and his place was taken by General McNaughton, the former commanding officer of Canadian forces in England, who contended that the use of non-volunteers was not necessary. In a few days, however, it was found necessary to adopt what for all practical purposes had been the Ralston policy. This led to the resignation of Mr. Power, of the Air Ministry, who, like M. Cardin, held a Quebec seat. Whether Col. Ralston was technically dismissed may be open to question, but there have been such cases, as 1916, when Sir Sam Hughes, Minister of Militia, was dismissed for insubordination.

Cabinet unity and collective responsibility have been so successfully extended over all aspects of general policy and specific administration that it is frequently said that they provide continuous ministerial irresponsibility. So long as the Cabinet retains the support of its majority in parliament, the iron band of party discipline makes it practically impossible for any criticism of a particular action or of a single minister to be effective. The Cabinet is forced to regard any indication of parliamentary disfavour as a withdrawal of confidence. Accordingly, although the Opposition and dissident factions may denounce specific details of conduct and policy to the full limit of parliamentary tolerance, such criticism can rarely gain the support of the House as a whole. One consequence of the security of Canadian cabinets is the continuity of their personnel, a feature which may by no means be attributed to the exceptional administrative capacity of the members. An illustration of the continuity is to be found in the fact that all the Liberal ministers who took office with Mr. King in 1935 were still in the Cabinet in 1939. The play of political forces which leads to ministerial shifts in other countries normally produces few such changes in Canada. Administrative incompetence and mistakes in general policy are

apparently less dangerous to a ministry than political dissension, as has been shown often enough in the past. The pressure of war, however, does tend to accentuate administrative efficiency and there was, accordingly, a reshuffling of cabinet posts in 1940. Even then, it appears, the main changes came from the establishment of new departments and the reassignment of administrative duties as additional functions of government were undertaken. In all these circumstances the character of the Prime Minister in managing his colleagues and judging the political and administrative necessities has been the decisive factor.

Although the members of the Cabinet are chosen in the first place for political reasons, it must not be forgotten that the Cabinet has to be regarded as a body of department heads who jointly plan their common problems and related activities. A Cabinet must not only be politically wise in council, it should also possess a fair amount of administrative skill and co-operation. This provides considerable difficulty both for the Prime Minister and the Cabinet as a whole. The question of what protection a Cabinet will extend to its members individually when they bring it into disrepute by inefficiency or misjudgment in their departments is always a hard one to resolve. On the face of it, the entire group accept responsibility for all ministerial conduct. No Cabinet, however, can find time to supervise or approve every ministerial decision even if it desired to; a considerable area of individual discretion is inevitable. Yet no Cabinet can permit its responsibility to cover a minister whose conduct in his department brings the entire ministry under such severe criticism as to endanger its position. In 1939, for instance, when Mr. Mackenzie, Minister of Defence, was under fire for the method employed in awarding a contract for the manufacture of the Bren Gun, the Cabinet must have felt tempted to sacrifice him to the public outcry, especially when irregularities though not personal corruption were revealed by a royal commission of inquiry. As it happened, however, the approach of war and the public concern with other matters enabled the minister to be retained at his post until the actual outbreak of hostilities, when he was transferred to another department.



It will be observed that in Canada "ministry" and "cabinet" are or have been interchangeable terms. In Britain, there is a long tradition of supplementary ministerial appointments—the "junior ministers" who are heads of departments not sufficiently important to warrant inclusion in the Cabinet or who serve as under-secretaries to assist in the parliamentary representation of a department. No such development has been firmly established in Canada. Apart from early transient efforts in the 1890's and during the first war, use of parliamentary assistants for ministers has remained, save in the case of the Solicitor-General, a vague hope. In 1921 Mr. King announced his consideration of the matter "as a means of affording to members of the House of Commons opportunity of becoming more intimately acquainted with the business of the different departments of the Government and of qualifying for promotion to higher positions." It was not until 1943 that the experiment with "parliamentary assistants" was attempted. Parliamentary approval was then secured for the appointment of ten such assistants by inclusion of their salaries (\$4,000.00 each) in the "estimates" for the year. Seven members of parliament were named immediately to aid ministers of the following departments:—Prime Minister's, Finance, National Defence, Air, Munitions and Supply, Labour, and Justice. These parliamentary assistants, now at the maximum of ten, are neither members of the Cabinet nor of the "committee" of the Privy Council. They have as their chief duty the relief of their ministers from constant attendance in parliament and they will, of course, go out of office with the Cabinet. There are several good reasons why parliamentary assistants of this type have not hitherto been used. The House of Commons contains relatively few young men, and the Senate none. The struggle for office is inevitably keenest among the ambitious members of the majority party and no minister can look with favour on the prospect of an equal in age supplanting him in influence in the House of Commons. Moreover the large size of some Cabinets has sprung from the necessity of including as many influential men as possible; some members have been

"ministers without portfolio," that is, with no departmental duties and free to devote themselves to parliamentary activities. This has been largely confined, in the past to senators; but it has provided the opportunity to introduce into the Government parliamentary spokesmen who are not overburdened with administrative work. Lastly, it has to be remembered that in a federal system such as Canada's the central government does not possess the same extensive and comprehensive responsibility for national administration as is found in Britain. Nevertheless, the trial of parliamentary assistants has been quite successful and some have already advanced to ministerial posts.

Finally, it may be remarked that members of the Cabinet are paid regular salaries, in addition to their parliamentary indemnities, as Ministers of the Crown regardless of whether they are in active charge of a department or are without portfolio. The Prime Minister receives \$15,000.00; all other ministers with portfolio \$10,000.00 (and \$2,000.00 automobile allowance) without regard to the importance, number, or size of the departments they manage.

### *The Ministers and Their Departments*

The administration of government in the Dominion of Canada is conducted by separate departments, each of which is directed by a Cabinet minister. This does not mean that there is any necessary relation between the number of departments and the number of ministers, in the same way that the existence of ten departments in the United States limits the number of secretaries there. The size of the Canadian Cabinet varies with the judgment of the Prime Minister as to the political exigencies of the day; the organisation of departments, also fairly flexible, is determined both by the extent of government functions as laid down by law and by personal and political factors within the ministry. Although there has been a tendency in recent Liberal Cabinets to connect the number of ministers and departments, this has only been possible because the size of the Cabinet and the arrangement of departments are equally capable of modi-

fication. The first Macdonald Cabinet of 1867 was composed of fourteen ministers directing 13 departments; by 1917 the Borden Coalition Cabinet embraced twenty-two members supervising nineteen departments. A reduction to sixteen ministers was effected in the Meighen Cabinet of 1920 by the curtailment of departments. The King ministry of 1921 and the Bennett ministry of 1930 had 19 members. After 1935 the third King Cabinet was reduced to sixteen, with one senator without portfolio and fifteen other ministers in charge of the fifteen regularly established departments. As a result of war conditions considerable redistribution and reshuffling took place after 1940. Two completely new departments were established and the Defence Department subdivided for the three services. Since 1945, however, the war creations have withered away and have been replaced by some new departments dealing with post-war problems. The Prime Minister no longer takes charge of External Affairs and the office of Solicitor-General has been revived; the Cabinet now consists of twenty-one members, eighteen having departments. These reorganisations were not the result of drastic shake-ups but were rather the product of slow changes in which resignations and transfers aided the introduction or promotion of younger and more active ministers among the older or less capable colleagues whom it was impolitic to drop.

Each department has a statutory foundation and its functions are usually defined by specifying that the minister in charge shall have power to administer certain designated Acts of Parliament relating to particular subjects. Some of the present departments trace their origin to the administrative establishment of the old province of Canada before Confederation; some were created almost immediately after 1867; others have been instituted from time to time for specific purposes. Every department is divided into a number of divisions variously styled branches, bureaus, offices or even boards and commissions. Quite frequently, these special divisions owe their establishment to individual statutes or orders-in-council. But even if a department or its agencies is not specifically constituted by legislation, the

expense of its administration has to come before parliament in the annual estimates of expenditures and must find final parliamentary confirmation in the appropriation acts. The unification, subdivision or creation of new organs proceeds as necessity is felt, for when reorganisation cannot legally be effected by order-in-council, the Cabinet has no hesitation in securing the passage of the required legislation by parliament. When a minister holds two portfolios, that is, is responsible for the administration of two or more departments or supervises some of the special agencies, this does not necessarily imply the union of the departments involved or the assimilation of the special bureaus in the main department.

The existing organisation of the administrative machinery is the somewhat haphazard product of the Confederation process, the later expansion of government functions, and the political and personal composition of successive Cabinets. So far as governmental expenditures reveal the growth of administrative activities, the figures would indicate that the greatest expansion of public services followed the rapid increase of population early in this century and the participation in the first world war. From 1871 to 1914 the population of Canada gradually doubled, but half of this increase occurred after 1901. Throughout the latter part of the nineteenth century the costs of administration remained fairly constant; but by 1914 they had trebled. Thereafter, as a consequence of war, as much was spent on government between 1914 and 1920 as in the entire period from 1867 to 1913. Partly as a result of national debt charges and demobilisation costs, the total expenditures of 1920 were five times what they had been in 1913. The increase of government expenditures was perpetuated by extension of public relief, especially during the depression of the 1930's. The effect of the second world war has been overwhelming. Ordinary expenses almost doubled from 1941 to 1945, and though war activity reduced relief to negligible proportions, war costs rose to more than four billion dollars or half the national income. The decline of war expenditures after 1945 was offset not only by a higher national

debt but also by new social services (e.g., family allowances commencing in 1945 soon accounted for 10% of government expenditures).

No matter whether departments or special agencies are created by statute or executive order, it is clear that neither their formal existence nor the functions they serve represent a planned or systematic disposition of administrative services. No comprehensive reorganisation has yet been attempted; such alterations and adjustments that frequently occur have been chiefly *ad hoc* adaptations to special circumstances. Considerable interest was evoked by the publication in 1919 of the Haldane Report on the Machinery of Government, which surveyed British administration. The same year a Senate committee on the same subject, proposed the functional organisation of governmental departments along the lines of the Haldane scheme. The plan suggested was the classification of services in the following ten categories: Office of Prime Minister and External Affairs; Secretary of State; Justice; Finance; Interior; Defence; Communication and Transport; Production and Distribution; Labour; and Public Works. Reorganisation never quite attained this goal, and, although some degree of consolidation was reached before 1939, it was hardly a functional distribution.

It is perhaps unnecessary to say that the larger the Cabinet, and more particularly the larger the number of ministers with departments, the more difficulty is experienced in co-ordinating the activities of the several ministers and departments. Under normal peacetime conditions this task of "over-all" supervision and planning is undertaken by the Prime Minister, the Cabinet itself and its special sub-committees. But with the higher tempo of war, when to the ministers' usual political and administrative duties there is added a sudden need for more constructive and energetic direction, the accustomed dilatory methods of conciliation and compromise have to be superseded by new devices. In Britain, during the first war, the two chief innovations were the concentration of authority in a small war

cabinet of from five to seven members and the establishment of a secretariat to arrange agenda and information for the war cabinet and to circulate decisions among all other ministers concerned. These devices proved so successful that they were, in the main, utilised in the second world war. In Canada, on the other hand, this type of new machinery was not introduced during the war of 1914-18, though the tendency has been to employ it in the recent struggle.

At the outbreak of war in 1939 a War Committee (varying in membership from six to nine ministers) was set up to give central directions to the war effort. Shortly after this, the Clerk of the Privy Council became secretary of the War Committee, which was meeting three or four times a week if not oftener and needed careful planning for its agenda and recording of its decisions. When the Committee ceased function at the end of the war, the secretary assumed a similar role for the full Cabinet. Numerous other cabinet committees have continued to be set up—especially on reconstruction problems as the war came to an end. In the last resort, of course, all committees require the approval of the full Cabinet for their several projects.

A second device extensively used has been the creation of an infinite number of interlocking or interdepartmental committees, representative of several departments or agencies for the double purpose of advising and correlating the work of two or more departments and of supervising and administering certain new war activities in which the government now engages. The number of such committees, boards, commissions and offices was almost incalculable; a government directory published in 1942 listed over one hundred as then in existence. The sorry confusion that thereupon resulted came not so much from the multiplication of government agencies as from their misuse. Interdepartmental committees are an admirable device for co-ordination when their functions are primarily advisory, but when used for administrative purposes all the evils of conflict, irresponsibility and duplication are invited.

Perhaps it should be pointed out here that although boards and commissions are not unknown in English political history, their modern use, or at least the Canadian use of the name and form, is probably a concession to American influences. But, apart from one or two bodies such as the Civil Service Commission, the Canadian agencies can bear little or no resemblance to the "independent" executive agencies of the United States. There was a period, some years ago, when the American establishment of organs such as the Interstate Commerce Commission and Tariff Commission, led to an effort to create comparable bodies in Canada, but as the American reasons—congressional jealousy of presidential power, and fear of partisanship in administration,—are quite contrary to parliamentary concepts, it is fully understood that responsibility for all administrative action must be assumed by a minister. Accordingly, although there were numerous bodies styled boards and commissions even in peacetime, there is little question but that such agencies are really special bureaus or branches of a department under the direction and supervision of a minister. The extraordinary expansion of such American extra-departmental agencies both during the New Deal and in preparation for war seems to have encouraged Canadian adoption of this form of inter-departmental body in the first months of the war. But the consequences of their establishment in haste, ignorance, and opportunism were soon felt. In addition to the confusion of multifarious overlapping agencies, it frequently happened that when politically inexperienced businessmen were brought into high administrative posts they were sometimes led to model their conduct in the struggle for power and publicity on that of their opposite numbers in the United States. In 1942, for instance, the director of national selective service, found it necessary to resign when the Minister of Labour held up his ambitious and much publicised plans. Earlier in the year, too, the inauguration of food rationing by the Wartime Prices and Trade Board—one of the supposedly separate interdepartmental bodies—was carefully announced as being undertaken on the responsibility of the

Minister of Finance. The fact is, then, that the interdepartmental aspects of these boards (such as the Foreign Exchange Control Board, Shipping Board, Wartime Industries Control Board, and Wartime Prices and Trade Board), is confined to their composition as representative of several departments to which the boards are advisory and unifying agencies. The enormously extended administrative powers of such boards are actually exercised, after consultation and discussion, by the director or other official managing the board's work under the supervision of one minister. This situation also existed before the war. Every department possesses within its confines numerous agencies designated as boards or commissions which are little more than bureaus if they are administrative or semi-judicial; other boards, especially if interdepartmental, are primarily advisory.

An examination of the lists of the most powerful boards and the ministers to whom they are responsible together with a study of the process by which they function indicates that another device for co-ordination is operating, namely, the penetration and control of government services by a few "key" ministers. Neither the creation of cabinet committees nor the institution of overlapping interdepartmental bodies was sufficient to adapt Canadian administration, incoherent and duplicative as it was under the direction of many ministers carried over from peacetime politics, to the necessities of total war. The effective prosecution of the war required more than co-ordination of government departments, it also demanded active leadership and direction of private industry and a considerable amount of state-owned enterprise. When scarcity of industrial commodities was felt, as external trade was curtailed and the labour supply diminished, the allocation of materials, capital and manpower had to be undertaken with an eye to all aspects of the war economy. The central control was then gradually gathered into the hands of two or three of the more active ministers who had sometimes been shifted to key ministries or it was often entrusted to new appointees. Most important, perhaps, was the



Minister of Finance, who was moved to that post in 1940 from the less important national revenue department. Not only did his normal control of governmental expenditures and taxation make him the central figure in financing the war, but his control of foreign exchange gave him the last word with respect to exports and imports and his control of currency (through the Bank of Canada) brought naturally the maintenance of the "price ceiling" in order to stabilise the cost of living. By determination of direct taxation at the source of income, regulation of foreign exchange, and rationing measures and basic price regulation, he has touched every citizen's pocket and life. At the same time he dominated the activities of many other departments. The boards, which contained representatives from other departments, were thus primarily advisory, while also fulfilling their active functions as agencies for keeping in touch with the others.

The importance of the strength of the individual minister is also exemplified in the new departments of Munitions and Supply and National War Services. For some months at the beginning of the war an interdepartmental Defense Purchasing Board, soon followed by a War Supply Board, had been charged with the letting of contracts for war supplies. In 1940 one of the stronger ministers was shifted to a newly established department of Munitions and Supply and, although the department was not intended to determine what should be purchased but only how and from whom, it has come to dominate the production side of Canadian economy through "controllers" designated to regulate the flow of materials (timber, fuel, power, metals, chemicals, etc.) and supplies (power, ship repairs, machine tools, etc.) and who operate almost within the other departments. By the determination of "priorities" governing civilian, as well as war industries, and thus even affecting government enterprises, this department's activities may be regarded as second only in importance to those of the department of Finance. Other ministers, it is true, also sought to protect their authority, the most successful being the Minister of Agriculture who insisted on the exemption of agricultural products from the price controls,

but by and large these two key departments of Finance and Munitions have dominated the field through their agencies acting in consultation with other departments.

On the other hand, failure has met the new department of War Services, which was established in 1940 to undertake the "human" side of the National Resources Mobilization Act of 1940. On the face of it, the department would overlap the departments of Labour, Agriculture, and Defence in the same way that Munitions and Supply and Finance have trenched on the domain of Public Works, Mines and Resources, and Transport. Yet the new department never secured a strong minister partly because its first duties were confined to propaganda and voluntary services (after the national registration of 1940) and partly because the Cabinet lacked determination in its policy of "human mobilization." The result was that the successive new ministers holding the post all failed to make it the vital centre of war planning. When a more determined Minister of Labour was appointed at the end of 1941, the most important task of War Services, that of directing labour into the required channels, was taken over by the Labour Ministry, which thereby superseded the War Services department as the third or fourth most decisive power in the war economy.

### *Administration and the Civil Service*

Although the political significance of the several departments is often a reflection of the prestige of the particular cabinet ministers who have charge of them, it must not be imagined that the administrative importance of most departments is usually dependent on similar factors. The standard departments, especially in their peace-time functioning, are institutions of some continuity and, even if remodelled and reshuffled according to political exigencies of the day, they possess a permanent utility far beyond that of the individual and transient ministers or even of the Cabinet as a whole. The greater part of their activities has no "political" connotation, secures no publicity, and arouses no parliamentary interest.

In the previous pages the role of the minister has been described as if his function was primarily to translate into administrative action the will of Cabinet so far as it pertains to his specific department. This is undoubtedly a major feature of the system of ministerial government. Ministers are essentially politicians, representatives of the public as registered by parliamentary majorities, placed at the head of the administrative departments to provide popular, parliamentary, and political control. It is a mistake, however, to conclude from this that the whole initiative and drive in government springs from these political processes of the country's institutions. Too much weight must not be attributed to the influence of party "policy," since principles are hardly the most distinctive feature of the parties. The Cabinet as a whole is naturally most concerned with its own security and is normally predisposed to disturb affairs as little as possible. Unless newly installed with specific pledges or moved by the hope of securing a definite political advantage with the public, the Cabinet is little likely to enter upon novel experiments or extensive administrative changes without being subjected to special pressures of one type or another. The pressure, it is almost needless to say, may come from interested groups that have to be conciliated, from Opposition criticism, or from the energy and ambition of one or more particular ministers. Apart from these forces, however, the Cabinet, trained in moderation and skilled in compromise, has a natural tendency to deal only with those problems and emergencies that are forced upon it.

In any case, this is where the administrative establishments come to the fore. Whatever the source from which new projects and purposes come, they must run the gauntlet of the critical opinion of the experts in the departments who prepare the new legislative proposals, executive orders, or administrative arrangements in order for them to be translated into action. Politicians are, by and large, singularly ignorant of the technical aspects of the subjects with which they are supposed to be dealing. Even the ministers collectively and individually, having no special

qualifications for their departmental duties, are very largely unfamiliar with the details and problems of the administrative process. To a far larger degree, therefore, than is usually admitted the influence of the administrative officials is paramount.

The importance of the administrative branch is felt not merely in its function as a sieve through which external, political, or other pressures for new policies are sorted out and scrutinised, but also in the initiation of much of the business that has to go before the Cabinet, the Committee of the Privy Council, and finally perhaps before Parliament itself. As members of agencies that are going concerns and conduct the daily routine of government in its numerous aspects, the department officials are both familiar with existing rules and practices and cognizant of the problems to be faced, the deficiencies that exist, and opportunities for improvement. Alert administrators develop an acute consciousness of what is possible and what is not. The hand of the administrator is regularly displayed in large matters such as the annual preparation of financial estimates as well as relatively minor things such as the formulation of amendments to the criminal code. On these topics, as has already been suggested, the average member of parliament, even if interested, is ill-prepared to express an expert opinion, and the Cabinet, which ultimately takes responsibility for all official action, has to take on trust what its members bring forward while keeping a watchful eye on possible political repercussions and determining the priority to be accorded the mass of proposals. The individual minister concerned, usually a layman too, has the benefit of being coached by his expert advisers in the main features of his department's business and in turn expounds the issues (so far as he understands them) to his colleagues in the Cabinet or to the House of Commons. In this respect, then, ministerial responsibility means that it is the duty of the minister to defend his department's actions and to fight for their proposals and demands—to the extent, of course, that they have persuaded him of their validity. The officials of all ranks remain anonymous behind the scenes, inconspicuous in their wisdom and

expertness, but fairly secure in the midst of political instability. The minister takes the blame and the credit for failure or success in his department not only with the public and parliament but among his associates.

The term bureaucracy has been applied to systems in which a preponderant power is exercised by professional administrators or officials. There need be no doubt that bureaucracy tends to become a characteristic feature of Canadian government—tempered no doubt with democratic benevolence, political fear of attracting attention or reprisal, and the natural lethargy that accompanies security. Bureaucracy is the normal consequence of the wide extension of government activities in a multitude of complex and technical fields. How malign its influence is thought to be depends on the attitude of the critic not only to government procedures in general but to the very fact of state action in new areas.

In a parliamentary system such as Canada's no bureaucracy can exert much influence in shaping public affairs unless it possesses high ability as well as great professional skill. No matter how expert officials may be in their special departments, officials can affect public policy only to the extent that they can persuade their parliamentary chiefs to push certain topics and projects in Cabinet and to carry their schemes into the parliamentary arena. The continued growth of the power of Canadian officialdom is a mute testimonial to its frequently unexpected, and often undeserved, quality.

The chief foundation of official influence is, of course, at the top. Only so far as the highest rank of officials are of a level of ability at least equal to if not above the best politicians can they expect to be listened to with respect. In this regard it must be recorded that Canadian experience is somewhat exceptional. At the head of each of the eighteen departments (and of some dozen or more other agencies) is a permanent official designated as or ranking as deputy-minister. These thirty or more officials are not necessarily selected from the lower ranks of the departments and bureaus but are often drawn

directly from outside sources. Such appointments are within the gift of the Prime Minister, but they are not political in the sense of patronage; they have security of tenure and prestige and influence appropriate to their capacity. Occasionally, too, an ostensibly non-partisan deputy-minister is raised to Cabinet rank as minister for his department—as were Mr. King, first Labour minister in 1909, and Col. LaFleche, deputy-minister of National War Services in 1942; but in such cases they forfeit their permanence, have to secure election to parliament, and become subject to the rules governing ministerial office-holding. In general, then, the successful features of Canadian administration stem largely from the admirable selections that have been made of deputy-ministers. The best of these permanent heads have surrounded themselves with equally capable promising juniors of varying rank and status. The more there are of these latter, it may be observed, the more prospect there is of deputy-ministers being chosen from within the department and the more attractive the administrative career becomes to the highly talented. Not all the departments, however, have benefited in this fashion; some are still dormant with secure mediocrity, if not also handicapped by patronage. But the dominant departments, especially in war-time, have been those in which an alert officialdom has been combined with an aggressive leading minister. Since 1934 encouragement for this trend has been given by recruitment of civil servants in upper ranks by competitive examination attracting the best type of university graduates.

Under present circumstances it is perhaps impossible to exaggerate the power and significance of administration in government. Under ordinary conditions of the past the chief influence of officialdom came through their technical advice on detail and through their capacity as executive officers to enforce laxly or strictly the required policies. A minister of finance, for example, might be predisposed to tax reduction, but the itemised determination of how it should be attained while yet balancing the budget has long been largely dependent on the expert guidance of his officials—who also in the process of enforcement

could make it successful or unsuccessful. In recent years, however, two new forces have been at work increasing the power of administration. First, the popular acceptance of what has been called the "service state" concept—i.e., the use of government machinery to further social or economic ends such as the prevention of poverty, provision for greater equality, maintenance of public health, or introduction of cheap public utilities—has brought administrative activities into almost every field of social life. Neither Parliament nor Cabinet have found it possible to do more than lay down general objectives without particularising completely as to methods and applications. The administrative organs themselves, it is said, cannot know in advance all the ramifications of the various projects. Accordingly, it has become a standard practice to leave the executive (Governor-General in Council, Minister, Board, or Commission, as the case may be) with considerable leeway in making rules, devising procedures, and applying judgment in specific instances. The second new force that has profoundly affected administrative functions has been the embarking upon "positive" national policies especially in the midst of war but to an increasing degree in the face of other emergencies such as depression and world instability. The adoption of special "controls" in any phase of economic life is soon found to produce consequences in other aspects of the social structure that require appropriate treatment if the approved national purpose of winning the war, offsetting the effects of depression, or attempting to preserve stability in an unstable international situation is to be pursued. If the status of the international balance of payments makes foreign exchange control necessary, this immediately reacts on imports, travel permits, the cost of living, production and distribution within the country. The officials who administer and advise on these matters have the well-being of the country in their hands. In the nature of things, it is largely on their judgment that minister and cabinet alike rely for the effective use of the "emergency powers" that are invoked and exercised to guide the course of affairs.

For these reasons the administrative authorities have increasingly been entrusted with enormous discretionary capacities, in the use of which they have been given little or no instruction as to how to proceed and which allows but slight opportunity for *ex post facto* inquiry. Hundreds of orders go through the Privy Council, thousands of instructions and directives issue from the departments and boards, and enforcement is improvised for the countless series of applications to particular cases. It is in these respects that the old lines separating legislative executive, and judicial functions in government are obscured and are found to be overlapping. An administrative agency may be found making rules for the public, operating an industrial enterprise, and making decisions that involve private rights without regard for the historic dogmas concerning the distribution of different functions among separate organs. And, in the course of engaging in these new activities, the preponderant influence rests with the higher officials, for parliamentarians, whether ministers or not, can do little more than say yes or no to the expert and technical adviser.

It has already been remarked that the chief increase in the extent of administrative services has occurred in the past thirty or forty years. At the height of the reconstruction period after the first world war there were 47,000 government employees. A decade later, though many of the temporary agencies had disappeared, the number of employees was almost the same, for new activities had come to be pursued during the depression years. A tremendous jump in civil service figures resulted from the all-out conduct of the second world war. Even excluding all members of the uniformed services and those working for government-owned industries, the number of civil servants had almost trebled by 1945, the peak being 142,000. Some reductions were attempted in 1948, but there is no likelihood that the permanent post-war establishment will be much below that of wartime, which it now approaches. The reasons are not far to seek. New departments and new branches of old ones have been constituted to carry out new economic and social purposes



and an expansion of some former organs has been necessary to handle their enlarged duties.

Nothing has caused greater grief to Canadian statesmen than this service. The heritage of patronage, parsimony, and indifference to efficiency has been too great to permit impartial consideration of the problem. This is not to say that the subject has not been debated frequently, investigated expensively by parliamentary committees, royal commissions, and "efficiency experts", and denounced violently by disgruntled office-seekers and reformers alike. It has been said that "Canada has chosen to follow the English system in theory and the American in practice." Yet in this connection it should be observed that while partisan appointments have been a marked characteristic of government service in Canada, this has not had the full American accompaniments of the "spoils system", such as rotation in office and widespread dismissals at each change of party control.

It cannot be said that Canada has fully emancipated herself from the laxness of appointments by favour which tends to paralyse all efforts to attain a sound merit system. Several experiments with boards of appointment have been made, but even the present board of three commissioners (set up in 1918) lacks the primary qualifications of permanence, having but a ten-year tenure; and it is admitted that some former boards and commissions have not been above reproach in independence and incorruptibility. A second feature of the Canadian system has been the failure to agree to take the steps necessary to introduce the British principles in their entirety, namely, that the service should be on a career basis with recruitment based on examinations testing certain levels of general education and capacity. Instead of this, the Commission, when given enlarged opportunities in 1918 for extending its functions, fell back, under the guise of securing flexibility of entrance at numerous age and aptitude levels, upon the current American expedient of "classification" and selection for special work. The result is that although the civil service is duly classified and graded according

to work and pay, it is not "progressive" in the sense of careerism, but is what one may describe as stabilised occupationally. It is only in the higher and more completely professional posts that advantage is taken of the applicant's general background and future capabilities.

Before 1939 one quarter of the civil service was accounted for by the Post Office, the next largest agencies being Customs, Transport, and Public Works. During wartime, of course, the departments concerned with war activities came to the fore. Since 1945, however, the Post Office has again taken the lead, though the new trends are shown by the fact that Veterans Affairs and National Defence have moved into second and third places. A high proportion of public employees are still beyond the jurisdiction of the Civil Service Commission. Many of the exempted posts are in the "outside" branches—the smaller and more localised or unskilled jobs, especially those under the Post Office Department, for which difficulty might be experienced in finding examinable capacity. In these cases, vacancies are filled by department heads, often on the local recommendations of a member of parliament (if of the Government party), of the defeated parliamentary candidate (if of the Government party), or of a local party organisation in which the minister has confidence. Others are temporary appointments, a necessary device for special or seasonal expansion, but also a long established mode of evading civil service qualifications. Some agencies, too, especially those operating industrial or semi-industrial enterprises, are likewise excluded—no doubt to prevent the "security" that government employment usually gives.

The administrative departments with which the Dominion government faces the present post-war period are as follows—placing them in the order of their creation. (Ministers, it may be observed, take precedence according to the date of their appointment as privy councillors.)

1. *Post Office*, one of the original departments of 1867, is under a minister styled Postmaster-General. It is the largest single department so far as peacetime employees are concerned, and—admirably enough—shows a slight surplus of revenue over expenses.

2. *Department of Justice*, one of the original departments, has as its head a minister who is also styled Attorney-General. To assist him there is usually a Solicitor-General, who is formally a subordinate though a parliamentarian, and is now a member of the Cabinet. The Attorney-General is the chief legal adviser of the government, (though he cannot be asked for opinions in parliament), and he appears in court on behalf of the Dominion in important cases. Since criminal law (a federal subject) is usually left to provincial officials for enforcement, the Minister of Justice confines his work to supervision, the exercise of the royal prerogative of mercy, and the administration of the seven penitentiaries maintained for long-term convicts. He has general responsibility for the courts and their employees. For a number of years, too, the minister has had under him the most noted Canadian service, the Royal Canadian Mounted Police, which was originally introduced in 1873 as a semi-military constabulary to police the Northwest territories and is now also employed throughout the Dominion in game protection, suppression of smuggling and illicit use of narcotics, guarding Dominion public buildings, and supervision of aliens.

3. *Department of Public Works* was one of the original departments, resulting from the division of public works between provinces and Dominion in 1867. The department is responsible for the planning, erection and maintenance of government buildings from offices to docks. It rarely operates any of the government enterprises for which it provides plant or equipment.

4. *Department of Agriculture* was one of the first ministries to be set up (1867) by the Dominion. As agriculture is also within provincial jurisdiction, the Dominion department long continued chiefly as an agency of popular education, statistical information, and experimentation. In recent years it has also been concerned with prairie farm rehabilitation, agricultural marketing, the provision of long-term mortgage credit, and the reduction of wheat acreage.

5. *Department of Finance*, established in 1869, as a separate department under a minister who is also Receiver-General. He is of course the central figure in the Treasury Board, a statutory creation comparable to the historic British body of similar name. As the Minister is responsible for preparing the budget which contains an estimate of government expenses together with proposals for balancing them by taxation, his relations with all spending departments—and also with the provinces receiving subsidies—are quite intimate. As Receiver-General he manages the consolidated general fund into which the chief revenues flow. Since 1931 the Royal Mint at Ottawa has come under his charge; the Bank of Canada, created in 1935 as a non-commercial bank of issue, operates with directors named by the minister,

6. *Department of National Revenue* (formerly Customs and Excise) undertakes the administrative task of collecting customs and excise duties and income taxes.

7. *Department of the Secretary of State*, was constituted in its present form in 1873, under the Secretary of State. The Secretary is the custodian of the Great Seal of Canada and any privy seals; he is the channel through which all official communications with the provinces pass to the Lieutenant-Governors. As Registrar-General he registers all proclamations, commissions, and licenses, supervises the incorporation of companies, patent rights, bankruptcy regulations. He also controls the national archives and King's Printer. It is his duty to prepare and present parliamentary "returns." In the war, he had charge of internment camps, was custodian of enemy property, and was responsible for maintenance of prisoners of war.

The deputy-minister of this department is styled Under-Secretary of State.

8. *Department of Trade and Commerce*, established in 1892 under a statute of 1887, is primarily concerned with the collection of information through the Dominion Bureau of Statistics and the Commercial Intelligence Service whose agents are stationed in many countries as commercial attachés and commissioners. The department also undertakes the inspection of weights and

measures, electricity and gas utilities. Under it falls, too, the Board of Grain Commissioners, an inspectional and statistical body, and the Wheat Board, a price-regulating and wheat-purchasing organ.

9. *Department of Labour*, established in 1900, remained under the Postmaster-General until 1909. Its original purposes were to aid in the preservation of industrial peace by conciliation in disputes between employers and employees, to push the fair wages policy in government contracts, and to collect statistical information. As a result of evergrowing social needs since that time the department has taken charge of technical education, wages and hours of labour, cost-of-living bonus, unemployment relief in the depression and the new unemployment insurance scheme. During the war it came to operate the selective service machinery, and it now serves as an extensive employment agency.

10. *Department of External Affairs*, first set up in 1909, was long directed personally by the Prime Minister. The Secretary of State for External Affairs is now a separate minister. High Commissioners have been exchanged with other members of the British Commonwealth (including Eire), and twenty ambassadors and ministers with foreign states. The consular service is in a formative stage, the first permanent post being established at New York in 1943. Where no Canadian representative is at hand the services of the British diplomatic and consular agencies are utilised.

11. *Department of National Defence* was set up under a statute of 1922 which combined the early Militia and Defence (1868), the Naval Service (1910), and Air Board (1920). During the war each of the three armed services had its separate minister, but all have now been combined again.

12. *Department of Fisheries*, separated in 1930 from Marine and Fisheries, is one of the smallest departments, for this subject is shared with the provinces.

13. *Department of Transport* was also formed in 1936 out of the older Railways and Canals, Marine departments, and thus brings together supervision of land, water and air transport. Its oldest jurisdiction comes with respect to railways, but it was soon used to set rates for telegraphs and telephones. Although the establishment of the Trade and Commerce's shipping board and the withdrawal of the Canadian Broadcasting Corporation to the National War Services department tended to reduce the importance of the department at the outbreak of war, its authority was perpetuated by retaining the transport controller. The Canadian National Railways have been operated by a board under this minister since 1923, as also have six canal systems and eight harbours. In addition to the inspection of steamships, the department has been responsible for a small service to the West Indies. Control of civil aviation—including operation of Trans-Canada Airlines—is also in its hands.

14. *Department of National Health and Welfare* was expanded in 1944 from a former department that originated in the first world war. In addition to handling pensions for civilians this department is one of the chief agencies for new social services such as family allowances.

15. *Department of Veterans Affairs*, formed, like the previous one, from the earlier Pensions and National Health department to care for ex-servicemen and women, their hospitalisation, pensions, and re-establishment in civil life.

16. *Department of Mines and Technical Surveys* was originally (1936) the successor to the old departments of Interior and Immigration and Colonisation. Under legislation of 1949 setting up the two next departments, this one is chiefly confined to the mineralogical and geological aspects of its former duties.

17. *Department of Resources and Development* now supercedes the department of Reconstruction and Supply (1944) that grew out of the war-time department of Munitions and Supply and was entrusted with the planning of post-war industry and the co-ordination of government activities in making the transi-

tion to peace easy. Under the statute of 1949 it also administers crown lands, Yukon and the Northwest territories.

18. *Department of Citizenship and Immigration* (1949) is really a revival of former Immigration department that fell to Mines and Resources at a pre-war reorganization. This department also has charge of Indian affairs—and, as might be imagined from its title, the issuance of naturalisation papers as well as of citizenship certificates under the recent Canadian Citizenship Act.

In addition to these departments with political representation in the Cabinet and in Parliament, there are a few independent offices such as those of the Auditor-General, Chief Electoral Officer, and Civil Service Commission. The Prime Minister's Office, which of course has no administrative duties in the ordinary sense, was in the Department of External Affairs until 1946; now it is associated with the office of the Privy Council, of which the Prime Minister is President.

#### FOR FURTHER READING:

The imperial aspect of the Crown is described in A. B. Keith, *The King and His Imperial Crown* (1938). The most recent volume on Canadian relations with the King and Governor-General is G. Neuendorff, *Studies in Evolution of Dominion Status, The Governor-Generalship and the Development of Canadian Nationalism* (1942). Pertinent documents will be found in R. MacG. Dawson, *Canadian Constitutional Issues*, Ch. II, and a resumé of the early correspondence is provided in the same author's *The Principle of Official Independence*, Ch. VI. The Crown in its federal division within Canada is discussed in the following chapter.

No careful study of the Cabinet has been made, though illuminating comments are offered by N. McL. Rogers, "Federal Influences on the Canadian Cabinet," and "Evolution and Reform of the Canadian Cabinet," *Canadian Bar Review*, Vol. XI (1933), pp. 103-21, 227-44. See also Dawson's *Canadian Constitutional Issues*, Ch. III, and "The Cabinet: Position and Personnel," *Canadian Journal of Economics and Political Science*, Vol. XII (1946), pp. 261-82. A. P. Heeney, Clerk of the Privy Council, has written an authoritative account on "Cabinet Government in Canada: Some Recent Developments in the Machinery of the Central Executive," *ibid.*, pp. 282-301. Most current, of course, is Dawson's, *The Government of Canada* (1948), Pts. III and IV.

Administrative studies have chiefly been devoted to the federal problems to be dealt with in the next chapter. Special note should be taken of H. G. Villard and W. W. Willoughby, *The Canadian Budgetary System* (1928), supplemented by H. C. Clark, "The Financial Administration of the Government of Canada," *Canadian Journal of Economics and Political Science*, IV (1938), pp. 391-419. Considerable information is to be found in several studies prepared for the Royal Commission on Dominion-Provincial Relations, especially J. A. Corry, *The Growth of Dominion Government Departments* (1939). See also, J. Willis (ed.), *Canadian Boards at Work* (1941); J. A. Corry, "Administrative Law in Canada," *Papers and Proceedings of the Canadian Political Science Association*, V (1933), pp. 190-207. J. Willis, "Administrative Law and the British North America Act," *Harvard Law Review* LIII (1939), pp. 251-70. War developments have given rise to an extensive literature from A. F. W. Plumptre, *Mobilising Canada's Resources for War* (1941) to W. Y. Elliott and H. D. Hall, *British Commonwealth at War* (1943), Chs. V-VII. On the general aspects of administration in the "service" state, see Corry's *Democratic Government and Politics*, Chs. III, XI, XII.

The civil service is perhaps the most adequately treated subject. A comprehensive history and analysis is R. MacG. Dawson, *The Civil Service of Canada* (1929), with later developments by the same writer: "The Canadian Civil Service," *Canadian Journal of Economics and Political Science*, Vol. II (1936), pp. 288-300, and "The Select Committee on the Civil Service," *Ibid.* Vol. V. (1939), pp. 179-94. There is a noteworthy exposition by a former Prime Minister, Sir Robert Borden, "The Problem of an Efficient Civil Service," *Report of the Canadian Historical Association*, 1931, pp. 5-34. T. Cole, *The Canadian Bureaucracy* (1949) contains an admirable survey of Dominion and provincial problems. A symposium of opinions of eminent administrators and professors on "Training for Public Administration" was printed in the *Canadian Journal of Economics and Political Science*, Vol. XII (1946), pp. 499-520. A recent royal commission of inquiry produced the (Gordon) *Report on Administrative Classification in the Public Service* (1946).

Annual reports to Parliament are presented by each department and agency. Much information, though rarely arranged by department and less devoted to organisation than might be expected, is to be found in the annual *Canada Year Book*. The quotation on p. 195 is from W. B. Munro, *American Influences on Canadian Government* (1929), p. 71.



## CHAPTER VII

### THE PROVINCES AND CANADIAN FEDERALISM

#### *The Provincial Governments*

The Dominion Government which has been described in the preceding chapters is not the only government in Canada. Canada is a federal state, and the principal consequence of federalism is that political jurisdiction must be shared between several different governments which bear a distinctive relationship to each other. The existence of the federal principle in the Canadian constitutional system has already been noted from time to time in the previous description of the parliamentary institutions of the Dominion, and it is now necessary to investigate its nature more fully. Before doing this, however, it is desirable to examine briefly the form of the provincial governments. The provinces play the same general role in Canadian government that constituent units do in other federal systems. Their primary function is to serve as the major agencies of self-government on all matters not of direct Dominion-wide importance. They differ from the lesser organs of local self-government, such as counties and towns, in three ways—their size, the possession of parliamentary institutions, and, most important of all, the status of constitutionally autonomous communities.

For political and administrative purposes the Dominion of Canada consists of twelve great divisions, ten of these being provinces and the other two territories. The latter, the Yukon and Northwest territories, need not be considered here because they are entirely subordinate to the Dominion government which controls their institutions, laws, and administration. The provinces, on the other hand, are separate entities largely independent, in a constitutional sense, of the Dominion government. Physically speaking, they stretch from the Atlantic to the Pacific Oceans

and extend north from the American border as far as the 60th parallel of latitude in the western half and as far as the limits of the mainland in the eastern half. The provinces therefore embrace the southern two-thirds of the country and comprise 99.86% of its population. There is no separate federal or Dominion territory in the populated regions, not even a capital district such as is found at Washington in the United States or at Canberra in Australia.

The constitutional background of the several provinces is quite diverse. First, there are the provinces of Nova Scotia, New Brunswick, British Columbia, and Prince Edward Island, all of which came into Confederation with their pre-existing institutions practically unaltered by the union. With the exception of British Columbia, where representative institutions were not fully developed and were later regulated by provincial statute, they have retained their former and largely unwritten colonial constitutions in which were blended royal grants, British statutes, custom, and colonial legislation. Their very considerable powers of constitutional amendment had been recognised by the (British) Colonial Laws Validity Act of 1865. Second, there are the two provinces of Ontario and Quebec both of which were really new creations of the British North America Act of 1867. Although these new provinces had at first the same boundaries as the earlier colonies of Upper and Lower Canada, their institutions were specifically laid down in some thirty sections (Sections 69-87, 88, 134-44) of the British North America Act of 1867. Each of them was understood to inherit the principles of responsible government already won under earlier constitutions. Next, there are the three prairie provinces which owe their origin to Dominion legislation setting them apart from the northwestern territories. The Manitoba Act of 1870 and the Saskatchewan and Alberta Acts of 1905 are the special written constitutions of these provinces. Finally, there is Newfoundland, admitted in 1949, to be dealt with in the last chapter.

From the above account it will be evident that no Canadian province has drafted and adopted its own "constitution" in the

manner that the states of the American union have done (though British Columbia has perhaps gone farthest in producing its own written constitution). But, from the Canadian viewpoint, this is of little significance, as the provincial constitutional systems contain the well-known mixture of law and convention common to all British types of government. It makes little difference to provincial government whether the written part derived from original British or Dominion legislation is large or small. In accordance with Section 92 (1) of the British North America Act, the provincial legislatures have complete authority to amend their constitutions "except as regards the office of lieutenant-governor." The latter office is excluded from their control because it possesses a formal significance in the federal system. The general result of the provision for legislative amendment is that all the provincial constitutional systems are extremely flexible. Amendments do not even require a special form or procedure; a simple statute of the usual type may change the structure of the courts, legislature and administration. During the recent war, for example, the legislatures of Ontario and Saskatchewan, which have a maximum duration of five years, temporarily extended their own lives by ordinary legislative action. At the same time, however, it may be noted that the protection afforded the office of lieutenant-governor has occasionally been interpreted as a very real limitation. Thirty years ago, the province of Manitoba, under the influence of American experiments with direct democracy, was led to introduce the initiative and referendum in legislation. This attempt was blocked by the courts as impairing the lieutenant-governor's use of the veto, though it did not affect the Dominion's power of disallowance. This decision, however, has not prevented the use of popular votes as a means of instructing the legislature regarding the will of the electorate. Indeed the most noteworthy point about the decision in the Manitoba Initiative and Referendum case is that it reveals the hazard of leaving constitutional interpretation to courts of law. The important constitutional issue was whether direct democratic processes are compatible with responsible parliamentary govern-

ment, but the question was decided by the judges on a fictitious and highly technical point of law.

All the provincial systems are of the parliamentary type and assume the supremacy of the legislature. There is no legally restraining "bill of rights". The one restraint on the ordinary jurisdiction of all the provinces is that legislation may not prejudicially affect existing rights of denominational schools. Yet, despite the careful and somewhat complicated wording of Section 93 of the Act of 1867, this did not prevent the province of Manitoba from entering on a course which agitated politicians and lawyers for at least a decade at the close of the nineteenth century, nor has it left the situation much clearer elsewhere as is shown by later litigation in other provinces. Apart from this one general provision—and for Quebec a special language guarantee and a restriction on alteration of constituencies—the provincial legislatures are unrestricted within the field of provincial government. A bill of rights, such as Saskatchewan has recently enacted, is no more than legislation to protect individuals by setting public standards; it cannot bind future legislatures as do more fundamental constitutions. The British North America Act has no statement of provincial obligations such as is found in many federal constitutions. The rendition of fugitives from justice, for example, was regulated by British legislation before 1867, and since that time has come under Dominion control as part of the subject of criminal law. So, too, legal comity and the mutual acceptance of judicial proceedings follows automatically from the fact that the courts are everywhere "courts of the King". Non-discrimination against residents of other provinces was left to the reasonableness of the legislatures, as has already been explained.

In each province, government is conducted in the name of the Crown just as it is in the Dominion. It is usual for legislation to be enacted in His Majesty's name ("by and with the advice and consent of the Legislative Assembly"), though in the three provinces of Nova Scotia, New Brunswick and Prince Edward Island laws are made in the name of the King's representative.

The formal agent of the Crown in the province is the Lieutenant-Governor. The latter is appointed by the Governor-General in Council instead of by the King directly (as was the case before 1867). But despite his appointment by the Dominion government, it is well established that the lieutenant-governor continues to hold his former status, and, within the scope of provincial jurisdiction, represents the Crown in the same way that the Governor-General does for Dominion affairs. The provincial ministry, however, has no influence in the selection of the lieutenant-governor comparable to that of the Dominion ministry in the appointment of the Governor-General. The lieutenant-governor is not only appointed by the Dominion government, he is also paid by it. Nevertheless, the appointee is nearly always a resident of the province and is usually an elderly and fairly wealthy retired provincial politician. The salary varies from \$8,000 in Prince Edward Island to \$10,000 in Ontario and Quebec. The extent to which a lieutenant-governor may live in demi-semi-regal style depends upon his own fortune and on the generosity of the province in providing an official residence and an expense account. Appointment is for five years, though the governor may be removed "for cause assigned" by the Governor-General (Section 59 of the British North America Act omits the words "in Council", thereby giving rise to an early controversy with the Cabinet over his discretion). Two governors have actually been removed for political indiscretion; the first case (Letellier in Quebec, 1879) was one in which the partisanship of the Dominion government was the most evident factor, the second (McInnes in British Columbia, 1900) was more defensible. Generally speaking, however, a lieutenant-governor who conducts himself with dignity and impartiality in accordance with the traditions of the office possesses perfect security for his full term.

The formal powers of the Crown, so far as they are required for provincial government, are exercised by the lieutenant-governor in conformity with the principles of ministerial responsibility. The governor has little part to play in legislation except

to open the legislature, read the speech from the throne, and give the royal assent to bills. Although he is entitled to "reserve" provincial bills, under Section 90 of the Act of 1867, he has rarely done so since 1882, and the veto of provincial legislation has been increasingly confined to "disallowance" by the Dominion government, as will be explained later. In his executive capacity, the lieutenant-governor is advised by an Executive Council which has a statutory foundation in five provinces and rests on the prerogative in the maritime provinces and British Columbia. The council is identical with the cabinet and is composed of the parliamentary ministers responsible for advice and administration of provincial government. There is the same degree of obscurity surrounding the degree of the Crown's discretion in the province as was observed in the Dominion. Five ministries had been dismissed from office before 1903, but none since, though some governors have exercised considerable pressure on their ministers at certain critical junctures. In 1920, for example, the governor of Manitoba refused to accept a ministry's resignation after it had suffered a legislative defeat and forced it to accept a dissolution because no alternative government was in prospect. Such cases of the governor's intervention, however, are fairly rare. No support was secured for the suggestion that the governor should exercise his powers during the curiously complicated constitutional situation in Ontario in 1942-43.

The normal conduct of provincial administration is as much in the hands of the provincial ministers as elsewhere under cabinet government. There are sometime local digressions from the standard rules, due, no doubt, to the special conditions of provincial politics. To some extent, it may be said that party discipline does not bind legislators or ministers as rigidly as might be expected. In 1923, a free vote was permitted on a government measure in the Manitoba legislature, and the bill's defeat was not taken as a vote of want of confidence in the ministry. In that province, too, even cabinet solidarity has occasionally been discarded, as in 1940, when the premier and

some ministers were found abstaining from a vote in support of a bill introduced by another minister. Such incidents are perhaps of significance only as showing that provincial legislatures are not as insistent on parliamentary precedent and tradition as other parliaments.

Provincial cabinets differ considerably in their size, varying from six to eighteen members. As the departments of provincial administration are frequently more numerous than the ministers, it often happens that several of the ministers have charge of two or three departments. A typical executive council will combine in various ways among its members (in addition to one or two members without portfolios) the following posts: president of the council (not necessarily the premier), attorney-general, treasurer, secretary, ministries of public works, mines, agriculture, municipal affairs, highways, labour, education, and health. Since the regulation of many social and economic activities is under provincial control, much use is made of boards and commissions for licensing, regulating and managing public utilities, liquor, and such social services as workmen's compensation.

In accordance with parliamentary principles, the members of the council are drawn from the predominant party in the legislature. Provincial legislatures, however, have the distinction of now being unicameral except in the case of Quebec. Four provinces (Ontario, British Columbia, Saskatchewan and Alberta) commenced their provincial existence without second chambers; four provinces which entered Confederation with second chambers have since abolished them (Prince Edward Island 1873, Manitoba 1876, New Brunswick 1892, and Nova Scotia 1928). The sole remaining upper house is the Legislative Council of Quebec which is composed of twenty-four life appointees representative of the same twenty-four divisions used for the province's representation in the Dominion Senate. Elsewhere the Legislative Assembly is the sole parliamentary chamber. Assemblies vary in size, the two largest, those of Ontario and Quebec, comprising ninety members each, and the two smallest, those of Nova Scotia and Prince Edward Island, thirty members

each. They are now elected for a maximum term set at five years, subject to earlier dissolution. Adult suffrage now prevails, though women were excluded from voting in Quebec until 1940. Nova Scotia has an income, rental, or tax qualification; Manitoba requires a knowledge of the English language; Saskatchewan (until 1944) excluded Chinese; and British Columbia discriminates against Japanese and also against pacifist Doukhobours. Most provinces employ the single-member constituency scheme for representation, though in Manitoba and Alberta there is proportional representation for the cities of Winnipeg, Edmonton and Calgary and the alternative vote for the rest of these two provinces.

The two major national political parties are usually found in each province with separate organisation for the purpose of winning provincial and local elections. As their provincial objectives are distinct from those of the national parties, there is sometimes a little conflict between the provincial and national organisations of the same party. This is particularly the case when the provincial leader considers himself a personal rival of the national leader or when it is found profitable to emphasise regional or racial jealousies. If the same party is in power in a province and in the Dominion at the same time, there is the additional prospect of cleavage between the provincial leader as Premier and the Dominion leader as Prime Minister. The most extreme example of this was the six-year antagonism of Mr. Hepburn, Liberal Premier of Ontario, and Mr. King, Liberal Prime Minister of the Dominion.

It is in the province, too, that revolts against the major parties are usually felt first. The most noted example is that of the agrarian movement of the early 1920's which broke Liberal unity in Ontario and the prairie provinces and produced the several progressive and farmers' parties. Ultimately, it is true, these rebellions were smothered and the dissidents were largely re-absorbed by the Liberal party, but it was partly out of this background that there arose, during the depression of the 1930's, the Cooperative Commonwealth Federation and the Social



Credit party. When a distinctively new movement or party gains such strength in a province as to threaten the dominance of the two major parties, as did Mr. Aberhart's Social Credit party in Alberta in 1936, there is a general tendency for the two older parties to coalesce locally against the newcomer. This is sometimes the case in municipal affairs, as in Winnipeg where the party alignment is definitely Labour and anti-Labour. If the growth of the C.C.F. continues, the development of a Liberal-Conservative combination against socialism may be expected to spread to other provinces. In Quebec, on the other hand, it was the Conservative party which broke up when a longtime Conservative, M. Duplessis, captured the province in 1936 with his newly founded provincial party, the *Union Nationale*. In 1939, shortly after the outbreak of war, the Duplessis ministry was defeated in a provincial election by the provincial Liberals, aided, no doubt, by the Conservative votes of the English-speaking people who were antagonised by the anti-war policy of the *Union Nationale*. The return of M. Duplessis to power in 1944 did not mean that Conservatives had returned to the fold nor that the *Union Nationale* was the provincial branch of the national Conservative party; it represented rather a deep-rooted distrust of the French people for the Liberal policy of collaboration with the Dominion government. Provincial politics, it is needless to say, are more directly related to urban and rural organisation than is the case with federal politics, and are thus more open to the pressures of local vested interests.

### *Provincial Status and Canadian Federalism*

There is no question but that the provinces have every appearance of possessing parliamentary institutions quite comparable to those of the Dominion. Any doubts about provincial status spring from the nature of the federal system. It may seem paradoxical that greater uncertainty should result from federalism, which is supposed to be strictly a matter of law and to be

definitively settled in the British North America Act, than from parliamentarism, which is distinctively founded on usage and convention. Critics of written constitutions have long observed that the more precise and definitive their terms, the greater obscurity and confusion. At any rate, as was explained earlier, the combination of federalism with parliamentary government introduced a preliminary difficulty into Canadian constitutionalism in so far as law and convention compete as determining factors in its interpretation.

Some of the aspects in which federalism affects parliamentary principles have already been described in the preceding chapters. One clear result of federalism is that it reinforces the influence of constitutional law and promotes the tendency to discuss questions of parliamentary government in legal terms. At the same time, too, some political consequences of the federal structure of the country have been noted in the organisation of the parties and the composition of the Cabinet. It is to be expected, therefore, that parliamentary principles and institutions will also be found to exert a reciprocal influence on the theory and practice of the federal system, both as regards modification of the letter of the law by convention and usage and in the nature of the division of governmental functions and institutions.

The preamble of the British North America Act of 1867 commenced by reciting that the provinces of Canada, Nova Scotia, and New Brunswick desired "to be federally united into one Dominion." These provinces, then, as well as the colonies admitted later, were undoubtedly antecedent to the Dominion and this circumstance has been used to advance their status in the federal system. But a preamble is not law; and Section 3 of the Act, which authorised the issuance of the royal proclamation of union simply declared that the provinces were to "form and be one Dominion." The omission of any reference to the federal nature of the Dominion gave prominence to the unitary aspects of the new establishment. The remaining provisions of the Act so far as they relate to the status of the provinces fall into two categories—those which are "general,"

and extend to all provinces then contemplated or later admitted, and those which are "special" for particular provinces. As the original provinces were but four in number (Ontario, Quebec, New Brunswick, and Nova Scotia), the special provisions were almost entirely concerned with these alone. There were, however, two references to the prospective admission of other colonies (Newfoundland, Prince Edward Island, British Columbia, Rupert's Land and the Northwestern territories). Section 146 authorised the admission of such colonies "into the Union, on such Terms and Conditions in each case" as might be agreed on, and such terms were to have the force of law "subject to the Provisions of this Act." Section 147 described Senate representation of three colonies (Newfoundland, Prince Edward Island, and British Columbia) in the event of their entrance.

In the process of uniting, then, a number of specific Dominion-provincial agreements were embodied in the Act itself, and later "terms" of entrance were given validity by British orders-in-council or by Dominion statutes. These agreements dealt with such matters as provincial representation, establishment of railway and steamship communication, provincial debts and subsidies, division of public property and natural resources. Many of these specific terms of admission have been the subject of considerable later controversy. Their status has been a little curious. They have not always been regarded as the foundation of legal claims enforceable in courts of law, but have often been treated as inter-governmental agreements subject to renegotiation, arbitration, and alteration by concurrent Dominion and provincial legislation (with or without British endorsement). The existence of these terms, of course, has been used by the provinces to bolster their "contract theory" of Confederation, an interpretation that, by analogy, puts them in the same position as the American states prior to the civil war.

The more important and basic foundation of provincial status is derived from the general provisions of the Act that apply to all provinces, "original" or new. To understand these provisions it is necessary to bear in mind the constitutional significance of

the phrasing of British statutes at that time, because the latter are couched in the old legal terminology used in connection with parliamentary institutions. Even when the federal division of powers between the Dominion and provinces is being laid down, the phraseology does not entirely bear a literal meaning; it has to be construed with reference to the constitutional background and political significance of the terms. This is particularly true with respect to royal authority in its many aspects. Canadian federalism, it must be remembered, was not merely an adaptation of American principles to Canadian circumstances, it was combined with and stated in terms of colonial responsible government as known in 1867. Up to that time the separate provinces of British North America had possessed a particular colonial status that had barely gained recognition in terms of law. After 1867 the provinces, individually and collectively as the Dominion of Canada, continued to be colonies, though with a higher standing than the letter of the law admitted. Fifty years later, however, the attainment of a new Dominion Status, expressed both in terms of conventions of the British Commonwealth of Nations and in British statutory enactment, had effected a still greater contrast between the wording of the British North America Act of 1867 and the real constitutional position. Nevertheless, every effort is made in Canada to construe the general provisions of 1867 in such a fashion as will preserve the provinces in their original relative positions so far as the Dominion is concerned.

The issue involved in the never-ending dispute over the status of the provinces in the Dominion of Canada is the nature of the Canadian federal system. The primary feature of federalism is a division of the functions of government between central and regional authorities. This division may take several forms and the particular pattern it assumes in any given country is the result of special historical forces, political compromises, and administrative considerations. There are thus as many varieties of federalism as there are countries utilising the federal principle. The principle, it may be remarked, is not merely suitable for Canada, it is apparently a necessity. The cleavage of race,

language, and religion, together with the divergence of sectional economy and social life, makes some form of divided government even more imperative today than it was in 1867. Despite the aspirations of those who think in terms of social and economic as well as political unity, it seems inevitable that insistence on regional differentiation must long continue. Federalism has the advantage of providing constitutional machinery for preserving the necessary provincialism while also permitting common action in essential matters. Far more than in the United States at present, the social circumstances of the country impose a federal system of government on Canada.

The fact that the American constitutional system is of a non-parliamentary type did not seem, in 1867, an insuperable handicap to Canadian adaptation of its federal principle. Indeed, it appeared highly appropriate to utilise the American invention in view of the identity in language, the similarity of economic conditions, the common legal and political heritage of the two countries. Nevertheless, it is impossible to say exactly how far it was proposed to copy the American system or how similar to the American states the provinces were thought to be. Under the circumstances, it is best to put aside consideration of what the Fathers of Confederation may have intended, for they spoke with many voices, varying degrees of knowledge, and divergent expectations. Attention may best be confined to the system as expressed in the words of the Act and as later developed from them. Rightly or wrongly, the constitution-makers of 1867 thought the provisions of the Act were so definite and precise that it would provide complete guidance for the future. Yet the construction to be placed on the written words has given rise to innumerable legal disputes, parliamentary discussions, royal commission inquiries, and Dominion-provincial conferences without really clarifying the position or resolving the difficulties. The misuse of many political terms and the prevalence of historical misconceptions have kept alive the controversy, while political pressures and legal distortions have added to the general confusion.

As federalism is usually considered to rest primarily on legal foundations, it is necessary to note some important legal differences between the Canadian and American federal systems. In the first place, Confederation was not based on a contract between individual sovereign states, it arose from political agreements between dependent, though responsible, colonial governments. The terms of these agreements were not incorporated in one document deriving its authority from provincial ratification; they were given legal sanction by a British statute. There were two consequences of this. One was that the document establishing the federal system, being a British statute, was subject to legal interpretation by courts of law. Although this introduces the principle of judicial review which is practised in the United States, it cannot be and has not been the sole official mode of constitutional interpretation. Usage and convention, as well as other means of political agreement necessarily have a wider application than in the American system. Furthermore, the final court of appeal has been the Judicial Committee of the British Privy Council, a body which is not strictly a court of law and which is, of course, neither established by the British North America Act nor situated in Canada. The second consequence was that formal constitutional amendments could be made by the British Parliament. No provision for Canadian amendment was provided, and, although in practice constitutional autonomy accompanied the attainment of Dominion Status, formal resort to the British Parliament has been perpetuated even in the Statute of Westminster, 1931. From the British viewpoint it is clear that the Dominion government is the authoritative voice of Canada, but—although often asserted—there is not complete agreement that amendments affecting the provinces should only be requested after due consultation with them. This matter, it should be noted, is not a subject of law but of convention.

✓ The second major distinguishing feature of Canadian federalism is that the distribution of governmental powers does not come from delegation to the Dominion by the provinces (which

would thereby retain all the residue of unspecified authority) but was accomplished *de novo* by British legislation. The British North America Act of 1867 had the effect of withdrawing from the provinces their former rights of self-government and then redividing them between the Dominion and provinces. This federal division was not applied uniformly throughout all phases of institutions and functions as it had been in the American system, which is the purest and most logical of all federations; it was introduced only where such partition was thought necessary under the circumstances. There is a fairly definite division in legislative functions, a practical working bifurcation in executive powers and in proprietary rights, but no complete dual system of courts for the administration of justice. The special features of the division in these matters will be dealt with later; here attention may be directed to two specially important aspects in which incomplete separation of Dominion and provincial government has distinctive significance, one as a somewhat negative factor, the other as a more positive force.

The lack of absolute partition extending through all governmental functions implies that political co-operation between Dominion and provincial organs is constitutionally permissible. Although judicial construction of the British North America Act has emphasised the "American" separation of legislative fields into exclusive jurisdictions, as will be explained later, this is not an absolute principle for legislation nor does it apply completely in other matters. For one thing, the uniformity of laws for the common law provinces, under Section 94, clearly envisages co-operative legislation in some form, though none has actually been passed. But it is in administrative aspects that collaboration is more evident. In addition to the courts of justice, which are the prime example of co-operative action, there are several other cases of combined administration. The most evident instance is in the enforcement of criminal law. Legislation in this field is conferred on the Dominion Parliament, but enforcement in the early years was always entrusted to provincial officers. Local officers—as well as judges—make no discrimination in Canada

against criminal laws passed by the Dominion, as American state officers do against federal legislation. Prosecution, for instance, is in practice almost entirely in the hands of provincial officials. Moreover, the Dominion Royal Canadian Mounted Police, whose original duties were confined to the Northwest territories, have come under contract with most of the provinces for the policing of rural areas. In pre-war years, too, when income taxes were levied by both Dominion and provincial governments, some provinces found it more efficient to utilise the Dominion's collection services. Furthermore, during the recent war, the co-operation of other Dominion and provincial administrative bodies has been widely extended by numerous special arrangements. One may well believe that the provincial prejudice against direct collaboration and joint administration—as well as the exaggerated legal doctrine of “exclusive” powers—will increasingly disappear as the several governments enter more and more upon social services and economic regulation and guidance. At any rate, it should be clear that no permanent constitutional obstacle exists to hinder a far greater collaboration than has hitherto been practised.

There are, however, still more noteworthy examples of positive constitutional interaction between Dominion and provincial governments. It has already been noted that the lieutenant-governors are actually appointed, instructed, and paid by the Dominion government. But not only is the formal head of the executive department in the province a Dominion official, the Dominion government also possesses and exercises a veto on provincial legislation. The existence of a central power of legislative control is so evidently an indication of Dominion superiority that this alone would reveal that Canadian provinces are not legally comparable to American states. The analogy between this Dominion veto and the former British veto of colonial legislation is quite clear. The Dominion veto is provided for in almost identical terms by Section 90 of the British North America Act; but whereas the British veto of Dominion legislation has fallen into disuse and is now, by convention, constitutionally non-existent, the Dominion veto of provincial legislation is still exercised. The lieutenant-governor (on behalf of the



Crown) may assent to provincial bills or may reserve them for the Governor-General's approval; acts already assented to may also be disallowed by the Governor-General within one year. Since 1882 it has been agreed that it is contrary to the principles of ministerial responsibility within the province for a lieutenant-governor to reserve bills unless instructed to do so by the Dominion ministers. Reservation was frequently practised at first—on more than fifty occasions before 1900 but on only ten since—but is now rarely used. There is ground for thinking that it is as incompatible with provincial responsible government for a lieutenant-governor to be instructed to act contrary to the advice of his provincial ministers, as it was for the Governor-General to be instructed by British ministries to disregard his Canadian advisers.

Accordingly, the Dominion veto today is chiefly confined to disallowance. In the first years of Confederation, Sir John Macdonald, as Dominion Minister of Justice, laid down the following grounds for employing the veto: when provincial legislation was wholly or partly illegal or unconstitutional; when it was legal or constitutional but clashed with Dominion legislation on the same subject; and when it adversely affected Dominion interests. On these grounds some seventy-five provincial statutes had been disallowed by 1900. A general diminution of interference began in 1896, when the Liberals, as chief supporters of provincial rights, came to power under Laurier. It was contended that the first of Macdonald's grounds for disallowance—exceeding the province's legal jurisdiction—is more properly a subject for determination by the courts in the process of judicial review of legislation. Nevertheless, one hundred cases of disallowance had occurred before 1924, though many of these vetoes were defended as due to the injustice or impropriety of the provincial legislation. From 1924 to 1937 disallowance was unexercised; then it was revived for the purpose of blocking Social Credit legislation in Alberta (1937-40). Most of the eight Acts which have been disallowed were regarded as invasions of the Dominion field of legislation, though two of them were specified as unjust and confiscatory in character. In

this latest period, however, it must be recorded that the Dominion government has continued most reluctant to interfere, as was shown by the refusal to disallow Quebec's "padlock law", a severe anti-communist measure of 1937.

That Canadian federalism is of a distinctive character will now be evident. The provinces will be seen to hold a rather unique status. They are not "sovereign" entities like the American states. Although they possess a wide field of governmental jurisdiction, they do so subject to supervision by the courts and by the Dominion government. No constitutional hindrance exists to the co-ordination of national and provincial activities. To some extent it may be said that the provinces hold a status in the Dominion similar to the one they held as colonies under Great Britain—but with this added advantage, that they now possess representation in the central government. Furthermore, their historic rights of responsible self-government have been fortified by the influence of the American doctrine of a legally complete division of powers. The consequence is that their essential independence within a wide sphere of government is acknowledged, their special interests have been preserved from infringement, and their claims have been constantly effective through political parties, governmental conferences, and legal decisions. So firmly are the provinces entrenched in their powers and rights that when the status of the Dominion was raised to constitutional equality with Britain's by the Statute of Westminster, 1931, great care was taken to prevent this elevation of the Dominion from being detrimental to their status. Not only was the Dominion Parliament precluded from overstepping the bounds of federalism by denial of the power of amending the British North America Acts, but the provinces too were specifically released from the old bonds of colonial status.

### *The Division of Legislative Powers*

The character of a modern federal system turns upon the distribution of legislative authority. In Canada the division of power between Dominion Parliament and provincial legislatures

is the central feature of the British North America Act of 1867. When that statute was passed, its legislative provisions were further limited by the standard restrictions on colonial jurisdiction; but this has now been remedied by the Statute of Westminster, as a result of which the entire area of law making for Canada (apart from the amendment of the British North America Acts) is divided between Dominion and provincial legislatures. The primary principles of the legislative distribution are laid out in Sections 91 and 92 (to which the reader is advised to turn before proceeding), and their meaning has been elaborated in a long series of judicial opinions. In the following paragraphs attention will be concentrated on the distinctive aspects as they have developed in the course of legal interpretation.

The legislative division does not follow the American procedure of delegating to the Dominion Parliament a specific list of powers and leaving all the residue to the provincial legislatures; nor, as is often asserted, does it clearly adopt the reverse plan. It may well have been the intention of the Fathers of Confederation to grant to the Dominion Parliament all powers not definitely listed as provincial, but if this was their purpose they took such extraordinary precautions as have misled later interpreters. A superficial glance at Sections 91 and 92 indicates that there are two lists of enumerated powers; a closer inspection reveals that there are also two residuary clauses. So far as the Dominion Parliament's list is concerned, it will be evident that the draftsmen of 1867 were able to profit by American experience and to prepare it in a manner better adapted to modern conditions of industry, communications, and finance. In place of the slight enumeration of 18 subjects assigned to the American Congress, the Canadian document contains 29 topics for the Canadian Parliament. All the national powers of the American list are to be found—such as defence, taxation, postal service, currency, copyright, etc.—and in addition there are several new matters, such as banking, interest, bankruptcy, marriage and divorce, and criminal law. Some of these, and especially the last, are so

important that they bring federal legislation much closer to every individual in the country than had heretofore been the case in the United States. It must also be observed that even where the American powers are included in the Dominion list, they are stated without the limiting phraseology of the American constitution, e.g. taxation bears no qualification, the regulation of trade and commerce is not confined to inter-provincial and foreign aspects. Indeed, it will be evident that whenever there are specified limitations of phrasing, these are all on the provincial side. Section 92 names 16 subjects for the provincial legislatures—prisons, hospitals, municipal institutions, public lands, etc.—but many of these are partial powers: it is “direct taxation”, local works “other than . . . railways, canals, telegraphs . . . connecting the province with other . . . provinces,” the incorporation of companies “with provincial objects,” etc.

But not only does the dual enumeration appear to give a wider sweep of authority to the Dominion Parliament, it provides for Dominion dominance when conflicts arise. It was thoroughly understood that there would inevitably be overlapping of jurisdictions, that a piece of criminal legislation might affect “property and civil rights in the province” or that Dominion divorce legislation might affect provincial “solemnisation of marriage”. Accordingly, in order to resolve such clashes, Section 91 clearly declared, in its third line, that “the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects” thereafter enumerated, and, to make doubly sure, the section concludes with these words:

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of local and private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.

It might have been expected, therefore, that when a Dominion statute falls within one of the Dominion’s enumerated list in Section 91, such legislation would automatically be considered

a valid exercise of its power, even if it also affected some provincial subject in Section 92. It would also be expected that provincial legislation would be valid only if falling within the enumerated list of provincial powers and not conflicting with a Dominion power. But this has not been the interpretation placed on the words by the courts of law.

The courts early enunciated two principles to clarify—or, in the opinion of many constitutional lawyers, to obscure—the situation. In the first place, it was asserted that a subject might fall within Section 91 for one purpose and within Section 92 for another. This has the effect of preserving provincial subjects from complete absorption by the Dominion even when specified in Section 91. Then, in the second place, it was declared that the provincial powers are completely exclusive for all topics named expressly in Section 92. This precludes any Dominion legislation encroaching on the enumerated provincial field. Its effect has been prodigious. Provincial legislation on insurance and various aspects of trade regulation has often been upheld and Dominion jurisdiction checked with the consequence that each of these matters has become increasingly complicated and confused. Large areas of supposed federal jurisdiction have been almost completely nullified. The most noted example of this is provided by the (Dominion) Industrial Disputes Investigation Act of 1907, which was invalidated some twenty years later as invading provincial jurisdiction over property and civil rights in the province. Speaking for the Judicial Committee of the Privy Council, Lord Haldane then asserted it to be “now clear that . . . the power to regulate trade and commerce cannot be relied on as enabling the Dominion Parliament to regulate civil rights in the province.” “Trade and commerce” has thus little meaning; indeed, the Dominion jurisdiction is largely confined to the interprovincial aspect of its subjects, leaving the entire intraprovincial aspect to the provinces.

When one turns to the residuary clauses an equally unforeseen development is found. That there must be a residuum of unenumerated powers is inevitable, for it is beyond the capacity of

any constitutional draftsmen to anticipate all future governmental functions. The simplest solution is to leave all specified powers to one legislature, e.g. in the American model the residuary powers lie with the states. In Canada, however, the overly-ambitious Fathers of Confederation not only made a double enumeration of specific powers, but apparently established two residuary or *omnibus* clauses, though in different forms and with divergent significance. Section 91 commences with a general grant to the Dominion Parliament of power "to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to the provinces". Then follows the list of 29 subjects whose enumeration, it is carefully explained, is "for greater certainty, but not so as to restrict the generality of the foregoing" grant. For the Dominion Parliament, it seems, the major power was the *omnibus* one and the later enumeration was primarily a supplement. For the provincial legislatures, on the other hand, the residuary clause of Section 92 appears as subsection 16, on a par with the other 15 topics, and its words—"generally all matters of a local and private nature"—were to supplement that list.

As interpreted by the courts, both residuary clauses have been cast aside, and the effect of judicial construction has been to endow another provision of Section 92—subsection 13, "property and civil rights"—with residuary meaning while discarding entirely the Dominion authority over "peace, order, and good government." The treatment of liquor legislation indicates this trend. Although the licensing of saloons and taverns for revenue purposes is a provincial matter under Section 92 (9), a Dominion statute authorising restriction of liquor sales by "local option" was upheld in 1882 as a valid exercise of Dominion power in the interest of peace, order and good government. Yet, after some thirty or forty years of judicial approval of increasing provincial regulation of the liquor traffic, this subject had been brought so completely within the provincial field that at last the Judicial Committee went so far as to say that the original Dominion liquor legislation could

only be supported today . . . on the assumption . . . that the evil of intemperance at that time amounted in Canada to one so great and so general that at least, for that period it was a menace to the national life of Canada so serious and pressing the national Parliament of Canada was called on to intervene to protect the nation from disaster.

As a consequence of such decisions, "peace, order, and good government" appeared to provide the Dominion with jurisdiction only in national disasters and war, and accordingly it became necessary to speak first of the enumerated powers and only secondarily of the general power of the Dominion.

The revolution in interpretation is agreed to date from 1896 when Lord Watson spoke of the "general power" of the Dominion Parliament as being "in supplement of its enumerated powers" and as needing to be "strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in Section 92." The enumerated provincial powers were thus made the basis of the division and "property and civil rights" then assumed the status of an *omnibus* or residuary clause to the exclusion of Dominion jurisdiction. Rarely has the Dominion been awarded new subjects of legislation as they have developed; civil aviation and radio are the two exceptions to this statement. Practically all of Mr. Bennett's New Deal legislation was invalidated in 1937 as *ultra vires* of the Dominion Parliament. In one respect alone this has been remedied by a constitutional amendment of 1940 which inserted "unemployment insurance" among the enumerated powers of Section 91. The greatest indignation was felt when the courts held provincial jurisdiction precluded the Dominion Parliament from implementing Canadian obligations under international labour treaties.

It is a common opinion among Canadian constitutional lawyers that Canada possesses today a scheme of legislative federalism diametrically opposed to the conception of the Fathers of Con-

federation. In 1939 the parliamentary counsel of the Senate reported that,

The failure of the Act fully to achieve the intent of those who framed it has not been owing to any defect in draftsmanship, but has been caused by demonstrable errors in the interpretation of its terms. . . . I have found most serious and persistent deviations on the part of the Judicial Committee from the actual text of the Act.

Whether this opinion is justified or not, it accounts in large measure for the determination to abolish judicial appeals to the British Privy Council.

It is possible that the "provincial" trend is in process of being reversed and that Dominion authority is coming to the fore. In a recent case (1946) in which certain liquor Dominion regulations were upheld, the Judicial Committee specifically qualified the dictum quoted on the previous page. The tide of national feeling, the demand for social services, and the habituation to Dominion paramountcy in war-time—now extended on emergency grounds to the post-war period—all combine to strengthen the centralising forces.

### *The Division of Executive Powers*

At first sight it might be thought that the application of federal concepts to executive authority would present serious technical difficulties in view of the legal doctrine of the unity of the Crown. It will be recalled, however, that legislation is also made in the name of the King by several legislatures. There is, therefore, no apparent reason why administration should not be conducted in the name of the King by several different agencies. In practice, of course, as has been seen, the powers of the sovereign are delegated to the Governor-General and Lieutenant-Governors, who possess between them almost the whole scope of royal authority.

There is a slight formal difference in the origin of the two types of royal representative. It has already been noted that the Governor-General's post is not created by the British North



America Act, but rests on letters patent; the Governor's office, on the other hand, is definitely created by Section 58: "For each Province there shall be," etc. But, despite the fact that the Lieutenant-Governor is appointed and paid by the Dominion government, the courts have long held that he holds the same status as the Governor-General:

The act of the Governor-General in his Council in making the appointment is, within the meaning of the statute, the act of the Crown, and a Lieutenant-Governor, when appointed, is as much the representative of Her Majesty [Queen Victoria] for all purposes of provincial government as the Governor-General is for all purposes of Dominion government.

The constitutional position of the two types of Crown representative in the performance of executive functions is thus declared to be identical. Each nominally exercises in law the royal prerogatives appropriate to his government and each does so in practice on the advice of his ministers. Despite the source of the lieutenant-governor's appointment, the conventions of responsible government make it as unconstitutional for the Dominion government to instruct him in his duties as it is for the British government to instruct the Governor-General. Apart from the legislative veto, there is never any attempt on the part of the Dominion government to intervene in provincial administration. Indeed, the provinces have been far more free from external influence than they were as colonies directly under British control. The introduction of American doctrines of states' rights has joined with the British conception of responsible government to establish and maintain quite effectively the theory and actuality of provincial independence on the executive side of government.

Since the nominal exercise of the executive powers of the Crown is understood to be conveyed to the representatives of the King, the British North America Act of 1867 proceeds to clothe the Governor-General and Lieutenant-Governors with statutory authority appropriate for their respective spheres of

government. Being enacted in colonial days, the Act takes the form of dividing the former powers of the colonial governors between the two types of governors. The terminology used to do this is somewhat complicated. Section 12 transferred to the Governor-General the powers of the former governors "so far as the same continue in existence and capable of being exercised after the Union, in relation to the Government of Canada." The provisions for the provinces—Section 64 for the old provinces of Nova Scotia and New Brunswick and Section 65 for the new provinces of Ontario and Quebec—effect the general purpose of continuing or conferring executive authority on the Lieutenant-Governors so far as capable of being exercised in the provinces. "Capable of being exercised after the Union" is generally agreed to depend on the primary federal division of power in the constitutional system. It has been laid down authoritatively by the courts that "the distribution under the new grant of executive powers in substance follows the distribution under the new grant of legislative powers." In other words, the various governors' powers coincide with, and are restricted by, the legislative jurisdictions of their respective governments.

Whether this legal interpretation is an adequate or complete explanation of the federal division is not material here. The matter has never been fully determined; but it will be noted that the federal relations of the executive governments are also subject to judicial interpretation of the courts and that, from time to time, adjudication on them takes place. Thus, on one occasion, the courts decided that the Lieutenant-Governor—that is, of course, his ministers—might appoint King's Counsel with precedence at the bar; in another case, it was held that the grant of a "royal" charter of incorporation gave such life to a company as to permit it to conduct business outside the province where incorporated for provincial purposes. The power of pardon is similarly held to be divided between Governor-General and Lieutenant-Governors in respect of the Dominion and provincial spheres of punitive justice.

The general effect of the legal construction is to carry over

into the executive side of government the doctrines which prevail in the legislative branch. As already noted, the Dominion Parliament's capacity to make laws for the "peace, order, and good government of Canada" has practically been nullified, the jurisdiction over trade and commerce has been confined to interprovincial aspects, and large residuary powers have been attributed to the provincial legislatures. There is, therefore, a corresponding diminution of Dominion executive authority and a correlative increase of provincial. This would be contrary to some federal doctrines of division if it did not coincide with a contradictory tendency. Just at the time when the courts have succeeded in raising provincial rights to a fairly high level and curtailing Dominion powers to a minimum, the development of Dominion Status has imposed on the Dominion executive a number of duties and obligations which were not contemplated in 1867. The most evident case of this is in the realm of external affairs. Since 1923 the Dominion executive has acquired by convention the right to enter into treaties with foreign states. These treaties and agreements may, of course, extend to any matter whatsoever, regardless of the federal division of powers. But such treaties, even when ratified formally by the Crown, are not part of the "law of the land" to the same degree, say, that duly ratified treaties are in the United States; they often require legislative implementation. Unfortunately, however, the Dominion Parliament's jurisdiction is limited by law to the subjects in Section 91 of the Act of 1867. When the Act was drafted such a Canadian treaty-making power was unforeseen, and the only legislative power granted to the Dominion Parliament for treaty purposes was that of enforcing obligations incurred by "British Empire" treaties (Section 132), of which there are now none so far as Canada is concerned. The existence, therefore, of a Dominion executive treaty-making power without co-ordinate legislative authority is one of the anomalies of the new status. It also indicates that executive jurisdiction (founded on both law and convention) is not necessarily tied down to the legislative division that is derived entirely from law.

Another doctrine of the legislative division, that of the exclusiveness of Dominion and provincial powers, has also been carried into the executive field, despite the examples mentioned earlier of collaboration and co-ordination in administration of criminal law and justice. Parallel administrative systems exist for several functions, such as agriculture, fisheries, and regulation of public utilities. The most serious difficulty springs from the fact that legal interpretation has checked efforts at administrative and political co-operation attempted by various devices known as "enabling" legislation, legislation by "reference," or legislative "delegation." The strict legal view has been expressed as follows:

The Dominion cannot give jurisdiction or leave jurisdiction with the province. The provincial parliament cannot give legislative jurisdiction to the Dominion parliament. If they have it, either one of them, they have it by virtue of the Act of 1867 . . . we must get rid of the idea that either one can enlarge the jurisdiction of the other or surrender jurisdiction.

The result of this doctrine would seem to be that all collaboration, including joint administration, is legally impossible. Nevertheless, experience has shown that effective administration in several fields of government regulation and supervision cannot be obtained by completely separate action on the part of the Dominion and provinces, especially when a topic, such as agricultural marketing legislation, is held to be split between the two legislatures. And, as was remarked earlier, this theory of complete exclusiveness and non-cooperation is not carried out logically through the whole system. The legal view, however, has encouraged the unwillingness to collaborate that is rooted in provincialism. Yet there have actually been a dozen attempts during this century to secure political co-operation through Dominion-provincial conferences of premiers and other ministers. It cannot be said, however, that very much of a constructive nature has been attained, for these conferences have usually resolved themselves into opportunities for the provinces to wring additional financial concessions from the Dominion.

A few words about the federal aspect of government finance are necessary here, for the extent of executive powers is even more closely related to revenue sources than it is to legislative power. The fact is that the Dominion and provincial legislative powers of taxation are in inverse proportion to their administrative responsibilities. The Dominion's taxing power is quite unlimited as to method, incidence, and purpose; the provinces' power is restricted to direct taxation within the province and to some odds and ends of licenses and fees. Yet it is the provincial functions of government that have increased and the Dominion duties that have been curbed by judicial interpretation. As the provinces had lost their chief pre-Union sources of revenue—customs and excise—they were relieved of their existing public debts up to \$25 per capita of the provincial population and those provinces which had a lower debt-burden were also given a bonus in the form of special cash "debt allowances." Further, each province received by agreement various annual lump sums for general governmental expenses and, in addition, an annual subsidy calculated at 80¢ per inhabitant. These arrangements permitted special payments to the poorest provinces at that date, and it was expected that the fourfold plan of payments would prove equitable and lasting; Section 118 declared them to be "in full settlement of all further demands on Canada." Similar arrangements were made for later entrants as they came into Confederation.

These financial terms, however, have not remained permanent. The original provisions have usually been found inadequate by some provinces, political pressures for extra benefits have been continuous—even the threat of secession has been used—and frequent efforts have been made to show the detrimental influence of certain Dominion policies (especially the protective tariff) on sectional industries, such as agriculture, mining, and fisheries. Some thirty or forty changes in the provisions have actually been made, though only one general readjustment has gained the status of a constitutional amendment (that of 1907). A special case has been presented by the prairie provinces, which had not originally received control of their public lands

because the Dominion wished to take charge of immigration and settlement, and they have therefore been given supplementary grants until the transfer of natural resources was accomplished in 1930 by constitutional amendment. This transfer was the occasion of a successful demand for further compensation for the loss of revenue suffered in the preceding years. Meanwhile, from the very first years of Confederation, the maritime provinces have sought and have often secured special debt adjustments and extra amounts for governmental expenses. In the great depression, too, large grants for relief were extended particularly to the prairie provinces. This, however, did not prevent Alberta from defaulting on interest payments under the influence of social credit theories during the depression of the 1930's.

There are many objections to the practice of one government collecting revenue while other governments spend the proceeds. The chief reason for its continuance in Canada is that the increasing governmental expenditures for modern programmes of social work, road-building, industrial regulation, etc., fall upon the provinces under the federal division of powers, though their revenue sources are strictly limited. The Dominion government, on the other hand, with unlimited resources but relatively restricted functions, inevitably becomes the source to which most provinces—all, in fact, but Ontario and Quebec—look for aid and assistance. The constitutional amendment of 1940, which conferred unemployment insurance on the Dominion government, will alleviate the situation to some extent; but far greater changes in the distribution of functions or revenues are needed. During the recent war, the urgency of Dominion needs for war purposes led to a series of agreements under which the Dominion alone collects income taxes and pays to the provinces fixed sums in compensation for their losses from that source, as well as in compensation for other diminished provincial revenues, such as those from gasoline taxes due to the curtailment of motor vehicle transport.

Finally, it must be recorded that when the Dominion government has resolved to foster certain types of services, the normal

control of which is presumed to lie with the provinces, it has allocated specific sums of money to the provinces willing to enter upon these activities for the purposes and according to the standards of Dominion legislation. This mode of experimentation with "conditional grants" or "grants in aid" commenced in 1912 with respect to agricultural education. In 1918 it was used for the establishment of public employment services, and in 1919 it was extended to highway construction, technical education, and the control of venereal disease. A further extension was made for old age pensions in 1927. The largest undertaking has been that of unemployment relief which commenced in 1930. Though most of these grants have already lapsed, or will soon, due to other arrangements, this has proved one of the most fruitful modes of co-operation between governments and has demonstrated the feasibility and desirability of Dominion-provincial collaboration.

### *The Judicial System*

The most significant major deviation from the thoroughgoing division of powers is to be found in the judicial system. Canada does not possess and was not intended to possess a completely dual system of courts. Indeed, for the first ten years after Confederation, there were no other courts than the provincial ones which were continued from the colonial period. Yet it must not be thought that the establishment of a parallel system of courts is directly forbidden by the British North America Act. Section 101 authorised the Parliament of Canada to provide "for the constitution, maintenance, and organisation of a General Court of Appeal" and for the establishment "of any additional courts for the better administration of the laws of Canada." But there is little likelihood of the erection of a separate set of courts, for the Dominion actually participates in the existing provincial administration of justice.

Each of the originally separate colonies entered Confederation with a complete judicial system of its own, and all provinces,

old or new, come within the operation of Section 92 (14) which entrusts to the provincial legislatures power to make laws for

The administration of justice in the province, including the constitution, maintenance and organisation of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in these courts.

Criminal law and procedure, it will be remembered—but not the establishment of criminal courts—is within the jurisdiction of the Dominion Parliament by Section 91 (27). The provinces also have some degree of punitive jurisdiction, for they are specifically empowered by Section 92 (15) to pass laws imposing punishment “by fine, penalty, or imprisonment for enforcing any law of the province.” On the face of it, then, the provincial courts administer justice “in the province” regardless of the source of the law being enforced, whether common law or statute, Dominion or provincial. The interesting aspect of Dominion-provincial collaboration appears in part VII of the Act of 1867, Sections 96-100. It is there provided that the Governor-General is to appoint the superior, district and county judges of the provincial courts (taking them from the provincial bars) and that the Dominion Parliament is to fix and pay their salaries, allowances, and pensions. In accordance with English legal tradition, judicial appointments are permanent, the phrase of Section 99—“during good behaviour”—being qualified by provision that they “shall be removable by the Governor-General on address of the Senate and House of Commons.” The consequence of these provisions is that while the provincial legislatures determine what provincial courts are necessary in the province, the Dominion appoints and pays the judges in all but the lowest courts. Municipal and local magistrates and justices of the peace (including probate judges in New Brunswick and Nova Scotia) are entirely within the control of the provinces. These judicial officials, however, also enforce all laws, Dominion or provincial, which are pertinent to their respective legal jurisdictions.



There is, therefore, no such division or conflict of judicial authority in Canada as may be found in the United States. In each province there is one hierarchy of courts extending from the local magistrate or justice through varying grades of county and district courts to the supreme court of the province. In all the provinces but Quebec, the English common law is administered, and in Quebec the customary old French civil law continues—subject in each case to later provincial or Dominion legislation in accordance with the division of powers already described. English criminal law applies throughout the whole country and is systematised in the criminal code enacted by the Dominion Parliament. As a heritage of conditions in the northwest territories, it has permitted the western provinces (as well as some eastern ones) to vary or modify the use of trial by jury, not only with respect to abolition of indictment by grand jury but also in the reduction of the jury to six or its entire abolition.

It was not until 1875 that the Dominion Parliament created a Supreme and Exchequer Court under Section 101 already cited. In 1877 the Dominion court was separated into a Supreme Court, now consisting of a chief justice and eight *puisne* (associate) judges, and an Exchequer Court, now consisting of a president and three *puisne* judges. The Supreme Court of Canada exercises, under regulations established by the Dominion Parliament, an appellate jurisdiction in civil and criminal cases carried to it from provincial courts and from the Exchequer Court. The Exchequer Court has original jurisdiction in cases relating to patents and copyright, suits against the Crown (in the right of the Dominion), and admiralty matters of maritime law. Under the Judges Act, the Chief Justice of Canada receives a salary of \$25,000 and the other supreme court judges \$20,000 each; the President of the Exchequer Court is paid \$13,333 and his colleagues \$12,000. The chief justices of the provincial supreme courts and courts of king's bench receive \$13,333 and their associates \$12,000 each, while the numerous provincial county and district judges receive \$6,666 each (52 or more in Ontario, 7 in Nova Scotia, 18 in Saskatchewan, etc.) Provincial judges who undertake Exchequer functions receive an additional \$1,000.

The reason that no Dominion Court of Appeal was regarded as necessary in the first years after 1867 was that there already existed a court of appeal in Britain. The Judicial Committee of the (British) Privy Council had been established by statute in 1833 and had received full authority in 1844 to hear appeals from colonial courts. In a technical sense, the Judicial Committee is not a court at all, but, as the name indicates, merely a committee of privy councillors advising His Majesty on certain matters. For all practical purposes, however, the Committee is a court of law, following a judicial form of procedure, and issuing a report which, although there are no dissenting opinions, is in fact the final judgment. The Committee is composed of British Privy Councillors who hold or have held high judicial office in Britain, the Law Lords, and certain senior judges from the Dominions and India who have been specially appointed to the Privy Council for this purpose. To a considerable extent, therefore, the Judicial Committee coincides with the British final court of appeal (the House of Lords) with the addition of the overseas judges. The Chief Justice of the Supreme Court of Canada was perhaps the one overseas judge most frequent in attendance.

The conditions under which appeals may be taken to the Privy Council vary with each overseas community and are laid down by statute or (British) order-in-council. Generally speaking a right of appeal exists in disputes involving the sum of £500, though special leave to appeal may be granted in "an issue of gravity involving some matter of public interest, or some important question of law, or affecting property of considerable amount, or when the case is otherwise of some public importance or of very substantial character." There was no right of appeal from the Supreme Court of Canada—as there was from provincial courts—but the discretionary privilege of the Committee to allow appeals by special leave was expressly continued in the (Canadian) Supreme Court Act of 1875. Appeals might therefore be taken directly from the provinces or from the Supreme Court, appeals from the latter being the most frequent.¶ As the

Judicial Committee's jurisdiction rests on British legislation and on the royal prerogative, it was impossible for Canadian legislatures to control or abolish such appeals before the recognition of Dominion Status. With the passing of the Statute of Westminster, 1931, however, a very different situation arose. A long-standing provision of the criminal code abolishing appeals in criminal cases had been held invalid in 1926, but its re-enactment after 1931 was upheld in 1935 by the Committee itself. The abolition of civil appeals has been considered more complicated because it involves provincial jurisdictions. But, when the issue was submitted for judicial opinion, the Supreme Court in 1939 and the Privy Council in 1947 concluded that it is within the constitutional competence of the Dominion Parliament to abolish all appeals from Canada. This action was finally taken by passage of a Canadian statute in 1949.

Before leaving the subject of the courts, it is appropriate to remark upon their status in constitutional interpretation. It has already been observed that, in accordance with the American doctrine that federalism implies a legal division of authority, the courts have undertaken the task of judicial review of legislation, and especially of provincial legislation. There is a significant difference between Canadian and American practice in this respect. The Supreme Court of the United States has refused to give "advisory opinions" on constitutional issues; all judicial interpretation of the constitution has therefore had to be made in the ordinary course of litigation. In Canada, on the other hand, the Supreme Court Act of 1875 imposed on that court the duty of rendering advisory opinions on constitutional questions put to it. This obligation has since been widened and made more specific by later amendments and similar duties have been placed on provincial courts by provincial legislation. For purposes of review by higher courts these advisory opinions are treated like ordinary judgments and were subject to appeal to the Privy Council. Among the advantages of this procedure is that it enables a government to secure an authoritative opinion as to

the construction of the terms of the British North America Act or the location of authority in a given matter before committing itself to lawmaking. As a result, in recent years, the chief opportunities for constitutional interpretation by the courts have been provided by these "references," as they are called. Incidentally, too, it may be noted that the Supreme Court of Canada is made the arbitrator in disputes between provinces which wish to submit their controversies, a procedure which has only been utilised once so far. This arbitral function is comparable to that of the Judicial Committee as between Dominions, e.g., in the settlement of the long-standing Labrador boundary controversy between Canada and Newfoundland, submitted to decision in 1927. The opinions given by the courts in the cases referred to them are not judgments in the ordinary sense, but are always accepted by all parties as decisive of the law of constitution. The chief result of the abolition of Privy Council appeals is that the Supreme Court of Canada will assume the role of final interpreter of the Canadian constitutional system so far as legal matters are concerned.

#### FOR FURTHER READING:

Provincial government is an entirely neglected field of study. There is no book on the subject and few articles deal with any general aspect of the matter. Two *Memoranda*, issued by the Dominion Attorney-General's Office in 1937, reviewed, in a legalistic fashion, *The Office of Lieutenant-Governor in a Province* and *The Dominion Power of Disallowance*. See also W. P. M. Kennedy, *Essays in Constitutional Law* (1934), Chapter III; E. A. Forsey in *Canadian Journal of Economics and Political Science*, Vol. IV (1938), pp. 47-59 and in *Politica*, Vol. IV (1939), pp. 95-123. All provinces publish a considerable number of public papers: *Journals* of the legislature, *Statutes*, and a *Gazette* containing executive orders and appointments. Few provinces publish legislative debates, and the issuance of bound *Sessional Papers* has been largely curtailed since the depression.

Discussion of federalism in Canada has provoked a large constitutional literature. The standard legal authorities are W. H. P. Clement, *The Canadian Constitution* (3rd ed., 1916), A. H. F. Lefroy, *Legislative Power in Canada* (1898) and *Canada's Federal System* (1913), and Lefroy and W. P. M. Kennedy, *Short Treatise on Canadian Constitutional Law* (1918). All of these works are now out of date and no lawyer has been willing to attempt a definitive work while the subject continues so problematic. Comparative treatment will be found in K. C. Wheare, *Federalism* (1946) and Corry, *Democratic Government and Politics*, Ch. XIII. The general works

listed at the end of the previous chapters usually contain some brief statement of the nature of Canadian federalism. R. MacG. Dawson, *Constitutional Issues in Canada 1900-1931*, Chapter IX (1933), contains some documents on Dominion-provincial relations. Perhaps the most useful single volume is the *Report on the British North America Act* (1939) made for the Senate by its Parliamentary Counsel (W. F. O'Connor), for it contains both a detailed criticism of the Judicial Committee's construction and a collection of selections from the chief cases, the Confederation conferences and parliamentary papers relating thereto. The quotation on p. 226 is from this *Report*, p. 11; the other quotations are from well-known judicial decisions. The British North America Acts, Orders-in-Council admitting the provinces, etc., were published by the King's Printer, Ottawa, in 1943. The constitutional decisions of the Privy Council are collected in two volumes by E. R. Cameron, *The Canadian Constitution as Interpreted by the Privy Council* (1915 and 1930 respectively) and in a further volume by C. P. Plaxton, *Canadian Constitutional Decisions 1930-39* (1939).

An admirable survey of the constitutional problems in their economic and social aspects is provided by the *Report of the Royal Commission on Dominion-Provincial Relations* (1940), *Book I, Canada 1867-1939*, with which were also issued several special studies, e.g., W. A. Mackintosh, *The Economic Background of Dominion-Provincial Relations*, J. A. Corry, *Difficulties of Divided Jurisdiction*, L. M. Gouin and B. Claxton, *Legislative Expedients and Devices Adopted by the Dominion and Provinces*. The emphasis on financial relations is indicated by the number of works issued in recent years: A. W. Boos, *Financial Arrangements between the Provinces and the Dominion* (1930); J. A. Maxwell, *Federal Subsidies to the Provincial Governments in Canada* (1937); C. L. Gettys, *The Administration of Canadian Conditional Grants* (1938); and W. Eggleston and C. T. Kraft, *Dominion-Provincial Subsidies and Grants* (a special study for the Royal Commission of 1940). The best general review of the economic and political problems is W. Eggleston, *The Road to Nationhood, A Chronicle of Dominion-Provincial Relations* (1946). Current comment on the various aspects will be found in the technical economic, legal and political journals.

There is no adequate work on the administration of justice in Canada. For some documents, see Dawson, *op. cit.*, Chapter VII, and F. H. Barlow, *Interim and Final Reports on a Survey of the Administration of Justice in the Province of Ontario* (1939).

## CHAPTER VIII

### LOCAL GOVERNMENT IN CANADA

#### *The Foundations of Local Government*

There is good reason for the belief that local self-government is the cornerstone of democracy. From antiquity it has been observed that the existence of numerous semi-autonomous communities is a major protection against the rise of tyranny in a state. Under a stable democratic system, local self-government serves a most valuable educative purpose. It is through participation in the affairs of the immediate community that individuals can most easily be brought to perceive their civic responsibilities and that popular interest in public matters can most readily be awakened, maintained, and made effective. It is there, too, that the close connection between wise policy and sound administration is most evident, for the electorate have constantly before them the consequences of their own decisions. The local council chamber also forms a proving ground for those candidates who aspire to render further public service in the larger fields of provincial or national life. In no other phase of government is there such an intimate contact between rulers and ruled as in rural and urban politics; nowhere else can the citizenry be so completely identified with their own government.

It is to be expected that local institutions of self-government should occupy an important and distinctive place in Canadian democracy. The enormous extent of the country and the diversities of climate, resources, accessibility, and living conditions have made local control and adaptation a prerequisite. As regional and racial differentiation have made unitary government unacceptable for the country, so the great size of most of the provinces—most of which exceed in area any state of the

American Union and, indeed, are larger than European countries—also necessitates a considerable devolution of the powers of self-government. The demographic situation therefore bolsters up the democratic predisposition to emphasise the role of civic organisation. Throughout the greater part of the settled portions of the country, the various local areas constitute units of real self-government instead of being mere subdivisions of the provinces for administrative purposes.

But it must not be thought that local self-government was an original possession of either French or English settlers in the same way that it characterised the American colonies which now form the United States. Prior to the introduction of responsible government in the late 1840's, the establishment of locally elected officials had been officially discouraged. The standard machinery of local administration had been the English court of sessions, a body which consisted of appointive justices of the peace. Even after the winning of responsible government, despite the example of the great English reform of 1835, locally controlled institutions were slow to be adopted. A complete system of municipal organisation—indeed, except in Ontario and Quebec, almost the entire structure of local self-government—was not attained until after Confederation. Local institutions were nowhere an original right; they have been established everywhere as the result of provincial grant, authorisation, or compulsion. Canadian local self-government is in no way founded on a constitutional or legal dogma of "home-rule" or local right in the American sense. There are, in fact, no constitutional provisions on the subject. The "constitutions" of such provinces as possess statutory foundations contain no reference to the rights of cities, counties or rural areas. The British North America Act of 1867 disposes of the matter with disarming simplicity. Section 92, which defines the provincial jurisdiction, includes briefly "municipal institutions in the province" and "generally all matters of a merely private and local nature in the province" as within the exclusive sphere of the provincial legislature. On the face of it, then, control of local government, without any qualification, is

entirely within the scope of the provincial legislature's powers. This is another illustration of Canadian reliance on the British principle of legislative supremacy, though it is not a supremacy of the central parliament but of the provincial legislature. All organs of local government derive their authority from the province and all are subject to the overriding capacity of the provincial government. No Canadian province bears any resemblance to those American States which appear to be constituted as federations of distinct localities. The picture is definitely one of provincial supremacy tempered by widespread recognition of the advisability of delegating to the municipalities certain powers and duties.

The territorial areas in which local powers of self-government are exercised varies considerably as the result of numerous historic forces such as the mode of early settlement, the adaptation of customary concepts to a new environment, and innovations introduced by successive waves of reform. There is, however, a primary division of each province into two major types of separate areas, and, regardless of the nomenclature employed, this division is chiefly based on the degree of population density and concentration. With the exception of Prince Edward Island, the areas with widely dispersed inhabitants are grouped in fairly large units generally designated as counties in the eastern provinces and as rural municipalities or districts in the western provinces. The areas of more concentrated habitation are usually constituted as cities and towns (even villages in British Columbia) that are quite separate from the rural divisions. There is no general agreement as to what distinguishes a rural community from an urban one for purposes of local government. To some extent it may be said that the rural divisions are the more basic and universal since they are the original or first compulsory units, whereas the urban areas have usually been separated from them at a later stage and by voluntary local initiative. In this respect the past fifty years has witnessed a decided trend away from rural life and a tendency to increasing urbanisation. In 1891 the rural population was reported as



comprising 68% of the people and the urban only 32%; in 1941 this had changed to 46% rural and 54% urban. This indicates that while over two-thirds of the population lived in the country fifty years ago, over half of them are now concentrated in smaller areas of more densely settled type. The census figures, however, have little governmental significance, for they are compiled chiefly with reference to areas as named and not with reference to their governmental status as independent of or separate from the rural divisions. Many areas that are urban for census purposes are actually subdivisions of the primary district or county.

There are some 158 counties (or their equivalents) in the four eastern provinces (Ontario, Quebec, New Brunswick, and Nova Scotia) and 588 rural municipalities or districts in the four western provinces (Manitoba, Saskatchewan, Alberta and British Columbia). Within these basic units there may be smaller divisions for special or restricted territorial purposes, such as villages and towns in most provinces (though not in British Columbia), parishes (in Quebec and New Brunswick), and townships (in Ontario and Quebec). Needless to say, these smaller subdivisions, especially in some of the eastern provinces, often prove to be of greater significance for the residents than the larger county or municipality.<sup>1</sup> Additional districts, sometimes smaller than the eastern county and sometimes larger than the western municipality are authorised for special purposes, such as the provision of schools, care of the poor, irrigation, etc. It should also be noted that in the six larger provinces there are extensive unsettled regions, newly populated areas, and bankrupt communities which are not capable of effective self-government. These areas are variously designated as local improvement districts (in Saskatchewan and Alberta), territories (in Quebec) or disorganised municipalities (in Manitoba) and are generally administered directly by the provincial government. Such areas are the product of exceptional conditions and embrace but a

<sup>1</sup> Note the exceptional provision in the British North America Act of 1867 for Quebec, (Section 144).

relatively small proportion of the population, although it must be noted that in one small province, Prince Edward Island, local institutions have never been provided for the three-fourths of the inhabitants who live outside the urban areas and remain under provincial rule except for school purposes.

The most highly concentrated areas of settlement are the cities, which are usually incorporated under statute or special charter as distinct and separate local units (though two of the three cities of New Brunswick form part of the counties in which they are situated). In the eastern provinces some towns, especially those with special charters of incorporation are also independent of the counties. In Prince Edward Island the eight urban municipalities (one city and seven towns) are the sole primary units of local self-government other than school districts. In the three most westerly provinces not only cities and towns but even villages may be separate from the surrounding or neighbouring rural municipality or district. There are about 110 cities and several score towns and villages which are independent units of self-government.

Designation as cities, towns or villages is sometimes determined by statutory classification according to population and is sometimes dependent on local choice; almost everywhere the designation bears some indication of the type of government and the scope of powers. In the smaller urban communities, the city or town unit of government is intended to coincide approximately with the densely settled locality. In the larger metropolitan areas, however, the governmental unit often bears little relation to geographic or population requirements. This indicates a failure of political organisation to keep pace with rapidly changing industrial and commercial development. Relatively small areas with a highly concentrated population may contain as many as 22 governmental units, as is the case with Greater Montreal. In the ten metropolitan areas possessing more than fifty thousand inhabitants each—and in total one third of the entire population of Canada—there were, in 1931, 91 such governmental units. There are two causes of this lack of unity.

One is the persistence of separate contiguous towns or cities long after they have developed into one metropolitan neighbourhood; the other is the tendency of growing urban centres to spill over into the surrounding rural areas in which satellite towns and suburbs are established (whether incorporated or not) and which often remain part of the larger rural unit. Progress in the unification of metropolitan government has been slow. The device most employed to meet this situation is the creation of some super-city co-ordinating machinery for special functions, such as management of harbours, provision of water supply, etc.

The disparity between established local institutions and real local communities is a matter of grave concern in the maintenance of self-government. When communities cannot effect their purposes, which they are often unable to do because of the limited geographic scope of their jurisdictions, they or some section of them must appeal for provincial intervention in their management. As is the case with rural government, the inadequacy of the corporate size of the unit, both in respect of population and in its powers and financial capacity, is perhaps the chief menace to the future retention of full local self-government.

### *The Primary Organisation of Local Government*

The separation of urban communities from rural areas, which has been noted as characterising Canadian government, indicates a tendency to follow British practice rather than American. But it is in the nature of provincial diversities that the division into two major types of governmental unit possesses neither the uniformity nor the apparent simplicity of the English distinction between counties and boroughs. When one turns to the structure of local authorities a further complexity of institutions and organisation becomes apparent.

The greatest degree of uniformity—at least in each province—is to be found in the largest unit, the county or rural municipality. The reason for this no doubt springs from the fashion in which this unit of local self-government has been imposed by legislative compulsion under general statutes. It was in the 1870's and

1880's that the rural counties and municipalities were first constituted and given their standard form. The larger rural units are now generally organised in two ways which are distinguishable according as they use or do not use smaller subdivisions as their basis. In Ontario and Quebec the county is governed by a council composed of the chief elected officials of the constituent townships, parishes, villages and towns. The subordinate divisions just named have councils of reeves (and deputy-reeves according to population) and two other councillors. The reeves and deputy-reeves for these subdivisions serve also as the county council and choose their own presiding officer, who is known as warden or *préfet*. This device serves to avoid multiplicity of elections and to co-ordinate the activities of the county and its constituent portions. In the other provinces, where the counties and rural districts are smaller in size and less populous, a smaller council is usually elected by the whole area (though in Saskatchewan councillors are elected by subdivisions of the district). The reeve or overseer is always elected by the whole community and often has a different term of office from the other councillors; if the latter serve for more than one year, one half or one third of them are replaced annually.

However constituted, it seems everywhere the practice for the general powers of self-government in rural areas to be vested in the council. The executive or administrative duties are performed by officials (clerk, secretary-treasurer, assessors, etc.) appointed by the council, and, though the reeve or overseer is sometimes designated by statute as the executive, it is clear that his duties are supervisory and are not exercised independently of the council. In this respect the English type of conciliar control is maintained, though it is checked by an unintentional and unexpected distribution of functional powers which is the result of establishing rival local authorities for special purposes, such as school boards, or by retention of the smaller village and township subdivisions with more localised functions.

The greatest diversity in organisation is to be found in urban communities. It springs in part from the historic origin of the

older towns and cities and in part from the voluntary nature of urban organisation even when regulated under general statutes. It must not be forgotten that the first areas with real organs of local self-government were established as the result of initiative in a few places. The Loyalist city of St. John, New Brunswick, secured the first incorporation in 1785; Montreal and Quebec procured charters in 1832; Toronto and Halifax followed in 1834 and 1841 respectively. Though provincial statutes now lay down certain minimum requirements for incorporation as village, town or city, the initiative in securing this status still rests in most provinces with the inhabitants. A community frequently has or has had considerable latitude in selecting the form and status desired. In British Columbia, for instance, where villages may be incorporated as separate units under the general statute, there are three villages which exceed eight cities of the province in population. One forty-year old city, Slocan, with 183 residents in 1941, was smaller than any village in the province. Titles then do not mean much. In Ontario only 7 of the 145 towns are independent of the county in which they are situated, whereas a reverse situation exists in many other provinces. Thus not only is the governmental position of urban communities often quite unrelated to their importance, but communities of the same size in the same province may possess entirely different systems of organisation and different powers of self-government.

Urban government has been the occasion of considerable local and provincial experimentation. Few if any of the older cities have retained their early forms and all the larger cities have undergone several changes. Montreal, for instance, is said to have had fourteen different systems in its first hundred years. The early cities were incorporated with the characteristic features of English boroughs. By the end of the 19th century the American practice of making mayors elective by the electorate was introduced. Councillors were soon assimilated to aldermen, who became representatives of the several wards into which urban communities were divided for electoral purposes. These

changes, if no further ones had occurred, would have produced a modified form of the standard English council type: with ward-aldermen constituting a council under the presidency of a popularly elected mayor.

A system, however, which works admirably in one country may fail elsewhere if social conditions and standards are different. Quite apart from the question of institutions, the same forces that undermined American local government at the close of the nineteenth century were also operative in Canada, though in lesser degree. Accordingly, some fifty years ago complaint at inefficiency, corruption, and aldermanic patronage led to a widespread movement for more concentrated authority. The distinctive device adopted was the selection (by the ward-aldermen) of an executive committee for the supervision of city administration. Montreal, which was late in introducing this form but is perhaps the best example of it today, possesses a council composed of a mayor and thirty-five aldermen who choose from themselves a salaried executive committee. The mayor, it might be added, despite his personal and political prestige and salary of \$10,000 a year, has little or no administrative importance; he is not even eligible for membership of the committee. The consequence of the system is to leave the council in ultimate control while transferring active administrative and financial responsibility to a small committee of five.

This executive committee scheme was first introduced in Ontario in 1896. In that province, however, it underwent a further stage of democratisation. The executive committee, styled board of control, was soon made elective by the entire city. From each of the nine wards in Toronto there are elected for one year two aldermen and at the same time the voters of the entire city select each year a mayor and four controllers. All of these twenty-three individuals—18 aldermen and 5 members of the board of control—constitute the city council over which the mayor presides. The board of control, of which the mayor is chairman, prepares estimates, supervises expenditures, makes contracts, nominates the heads of city departments, and

is responsible for general administration. The offices of mayor and controllers are considered full-time posts and are paid accordingly. The council as a whole has to approve rates, bylaws and certain appointments, but it cannot reverse specified executive decisions of the board of control without a two-thirds majority—which incidentally is quite rare as it requires the support of 15 of the 18 aldermen. The council also utilises a number of advisory committees, on each of which the mayor and one controller have places.

Needless to say, institutional changes do not of themselves eliminate the characteristic abuses that communities experience in local government. The board of control system has been tried in several of the provinces, but many cities have given it up. The city of Winnipeg reverted to the straightforward council system in 1920, at the same time abandoning the small ward electoral basis. There are now three large wards from each of which three aldermen are elected annually for a two-year term, by proportional representation. The mayor, who is elected at large, is merely the presiding officer of the council of 18 aldermen. In other places, during the last thirty years many other types of experimentation have been made. Sixteen cities have employed the city-manager form, but these have all been among the smaller communities—six of them suburbs of Montreal. The other distinctive American scheme, commission government, has had some temporary use in Canadian cities, but nowhere continues at present. Perhaps the most lasting influence of the commission system is to be found in the drastic reduction of councils in the west, where councils of five to nine may be found. In Vancouver, for example, the council is composed of a mayor and eight aldermen, all of whom are elected for two-year terms (four aldermen being elected at large each year, the mayor biennially). Yet there is no definitive subdivision of administrative work among the members as occurs in the standard form of commission government. The council acts as a whole, though each alderman is chairman of one of the eight standing committees of the council. It will be clear that the reduction of

councils in large cities necessarily reduces its representative nature. A greater burden of work and responsibility is imposed on the few councillors with the result that the office tends to become a full-time one and requires proportionate compensation.

Despite the retention of council control over civic affairs—as compared with the separation of powers in many American cities—Canadian municipal administration has departed from the British tendency to concentrate administrative supervision in the borough clerk. The English form, which in American terms is not far removed from a combination of council and city-manager system, has rarely been followed in Canada. The closest to it is perhaps to be found in Montreal where the director of departments has a general supervision over the other officials. The usual practice is for a council to establish committees concerned with the various community functions and these committees tend to watch over the appropriate departments which are headed by permanent civic officials, the latter being almost entirely independent of each other. The organisation of the departments varies greatly from city to city. Standard officials are the clerk, treasurer, auditor, solicitor, and medical health officer; in a city such as Toronto there are also department heads designated as commissioners for the following subjects: works, assessment, city planning, streets, buildings, parks, public welfare, etc. Co-ordination of the work of the several departments has to be accomplished by the council or its committees or by boards—to be mentioned later—on which certain officials may be placed *ex officio*.

The system of council control over administration has the merit of bringing aldermen into direct contact with the several agencies of the city. Often, however, this means that aldermanic and political influences are felt in every phase of civil government. It cannot be asserted that Canadian city government is characterised by a high spirit of professional integrity and official independence. This, of course, can only exist when there is an exceptionally healthy tone of civic responsibility and efficiency pervading officials, politicians, businessmen, and the public gen-



erally. There is no organised civil service system in municipalities. Permanence of tenure is quite widely acknowledged—as contrasted with American spoils—but patronage and influence are understood to be at work in the making of appointments and promotions. But if the more flagrant aspects of spoils are avoided, the direct dependence of the higher officials on council approval handicaps merit and efficiency and encourages a certain amount of connivance at patronage and influence. The particular incidence of these forces depends upon the local political atmosphere. Montreal has perhaps been the most noted scene of machine rule, but other cities from Halifax to Vancouver have also experienced discreditable scandals in civic administration. In this connection it may be remarked that the press has not felt called upon to engage in the same kind of muck-raking exposures such as featured the early years of this century in the United States, but it has been disputed whether this is due to an ingrained conservative hypocrisy or to a somewhat higher standard of conduct. The latter is more probable.

A word should be said about the electorate. Although the qualifications for suffrage are highly variable and extend from complete adult franchise (as in Winnipeg since 1943) to land occupation (as in many rural areas), the general tendency has been to restrict voting to property owners, tenants, rate-payers or polltax payers. In agricultural communities this limitation of suffrage is not so very inequitable since there is rarely any resident body of farm-labourers; but where industrial or mining development has occurred in the rural areas, the exclusion of lodgers and other disfranchised groups becomes markedly unjust. Needless to say, this condition is far more significant in urban communities, where it is still apparently supposed that only those who pay direct taxes as owners or tenants have a stake in the community and contribute to the support of its government. In many municipalities there are two or three voters' lists—e.g., Vancouver has two, Toronto six—the chief distinction being drawn between owners and tenants, with the former often accorded the exclusive privilege of voting on certain measures

involving increased taxation, capital expenditures or public utility questions which have to be submitted to popular approval. The owner-and-tenant qualifications often permit non-residents to vote, and sometimes (including corporations) to vote in as many wards as they may possess or occupy property in.

Civic elections are usually held at the end of November or early in January. They are entirely dissociated from Dominion or provincial elections both as to occurrence, voters' lists and qualifications, and, to a considerable extent, issues. Partisanship does not regularly follow national or provincial lines; independent candidacy is a regular practice in many communities. In recent years, however, there has been some tendency for the emergence of a social reform or labour group to confront property-owners' associations with a rival set of candidates. Where the C.C.F. has entered local politics, the Liberals and Conservatives, who otherwise have been officially inactive, tend to coalesce in a common front. One consequence has been to introduce national policies into the field of local politics. The proportion of voters who take the trouble to cast their votes is extremely small as compared with provincial or Dominion elections, often falling to 25 and 30% of the registered total. How destructive this may be for self-government will be apparent when it is recalled that several cities have budgets larger than the province in which they are situated.

### *Special Functions and Provincial Controls*

Although the characteristic feature of local government in Canada has been described above as one in which the rural and urban councils exercise full and complete authority over all branches of municipal affairs, this account would not be complete without reference to some inconsistencies and additional features. Canadian local government does not possess the simplicity of English machinery; it is not the model of unitary concentration of power as might be judged from the description of its primary organisation, even though it has not been exposed to quite the same disintegrating effect of separated powers and checks and balances

found in American local government where mayors, sheriffs, district attorneys, and a host of other elected officials have independent functions. The fact is that there are in Canadian cities and municipalities some special, subsidiary or supplementary, organs that are outside the general scheme outlined on the previous pages. The origin of these agencies is not to be found so much in imitation of American principles as in certain peculiar Canadian conditions and experiences. The oldest and most distinctive exceptions to the council system just portrayed are to be found in the administration of educational and police affairs.

Over a hundred years ago it was laid down by the great educational reformer of Upper Canada, Egerton Ryerson, that the combination of school authority with other civic functions would be destructive of educational progress. Accordingly, it is everywhere true that the control of school administration is vested in bodies separate from other civic agencies. In rural areas the school districts or sections are usually the smallest subdivisions of the county or municipality. Specially elected school trustees, usually three in number, are chosen for three-year terms (one retiring annually) in each school district. The school board has the duty and authority—under the provincial school act—to provide educational facilities for the children of the district. In urban communities a central school board is usually composed of members elected at the same time, by the same voters, and from the same wards as the city council. Generally speaking, the school trustees determine the financial requirements, but the municipal authorities levy the rate through their tax-collector. Rarely does the school board provide the entire financial support. In all provinces (except Quebec before 1943), free public education is a provincial requirement and a portion of money devoted to educational purposes comes from provincial funds. The difference between the provincial grant and the school expenditure is met from local funds and on the average is 80% of the total. The existence of separate or sectarian schools with some claim to public support has presented many bitter problems in some provinces. In Quebec, where Protestant schooling is a

minority right, the result has been to hinder the adoption of compulsory province-wide education (till 1943), to prevent the establishment of a single educational authority for the province, and to separate the tax-payers into two categories. School municipalities (for either "confession") are established on local petition; the majority group choose five commissioners and the minority three trustees, both as separate corporations with the right to impose taxes on the respective lists of sectarian tax-payers.

The merit of attempting to separate school affairs from other local matters is no longer debated; the tradition is too deeply rooted to be disturbed easily. But it should be observed that it is one aspect of distributing authority and of severing administrative power from financial responsibility. It does not actually eliminate partisanship, for wherever political lines are drawn in civic affairs they also extend to school elections. On occasion, too, there is conflict between the collectors and the spenders. In 1938, for example, after a long controversy between the Winnipeg school trustees and the city council, the school board was forced to resort to legal action to compel the council to transfer to it the educational sums collected.

The second distinctive peculiarity is to be found in police administration. Criminal law, it should be remembered, is a subject of Dominion legislation and the Parliament of Canada has enacted a criminal code effective throughout the entire country, and all police officers enforce Dominion, provincial or municipal regulations without distinction within their localities. A similar collaboration in the judicial system was noted in the previous chapter. The lower courts, those below the county or district court, are of provincial establishment and staffing. In the cities salaried magistrates or recorders (recruited from the legal profession) have superseded the part-time, non-professional justices of the peace who still function in the country. Rural policing is generally undertaken by provincial police or the R.C.M.P., with the aid of local constables where such exist in villages and towns. Urban policing is everywhere (except in

two small western districts, Melfort, Saskatchewan, and Flin Flon, Manitoba), a city function, though it is not directly under the city council. The usual administrative authority is vested in a police commission consisting of the mayor, a county court judge for that district, and the police magistrate or recorder (appointed, like the county judge, by the provincial government). The commission designates the chief of police and exercises its administrative supervision through him. Maintenance is provided by the city council. This arrangement, intended to keep police enforcement out of local politics, certainly does accomplish this end in comparison with American cities, but it too often leads to periodic conflicts between the council and the commission.

The two functions that have just been described as outside the normal ambit of the primary local government institutions hold this position for historic reasons, among which the late development of local self-government is most prominent. In recent years there has also been an enormous increase of other municipal functions which have come under the jurisdiction of separate agencies. Many of these have sprung from provincial legislation devoted to stimulating certain activities for which existing local governments were unsuited by reason of their small size or inadequate financial resources; others have been introduced on petition, especially by cities, which have sought provincial aid and assistance in providing powers and jurisdiction beyond the customary urban scope.

The most frequent reason for appeal to provincial authority in order to secure an extension of jurisdiction or to seek consolidation of municipal units has been in respect of education and public utilities. It was long since found that rural school districts were often too small for the establishment of high schools and that even in elementary education the unification of single-room schools was desirable. For this purpose, consolidation of school districts, especially in the western provinces, has proceeded rapidly. In metropolitan areas, on the other hand, super-municipal bodies have been sought for the provision of services

which could not be successfully operated by one governmental unit. This has been most marked in the case of water supply and sewage disposal. For instance, boards representative of the constituent municipalities in Greater Winnipeg and Greater Vancouver have been incorporated to serve the whole metropolitan areas. On occasion, too, often as a result of disputes with privately-owned utilities, provincial legislation has been invoked to create municipal-owned enterprises, such as the Toronto hydro-electric and transportation systems, each of which is under a three-man commission. In every large metropolitan area there will be found three or more inter-municipal agencies. In the case of Montreal, one of these even exercises control over the finances of all metropolitan units in the city and its suburbs.

A highly significant development, from the standpoint of local self-government, has resulted from the legislative imposition of specific duties and functions on municipalities, for it has been accompanied frequently by administrative supervision and control of provincial departments. One of the first cases came in the field of public health. In 1881 the province of Ontario established a provincial health board, and three years later it required all municipalities to appoint local health boards. The insistence by the province on the performance of specific functions in a particular way not only restrains the municipalities in the appointment and dismissal of such officials as public health officers, but often leads to the enforcement of provincial regulations in a mandatory fashion upon negligent bodies. Similar restrictions on local freedom have followed provincial supervision of public libraries, parks, suburban roads, hospitals, juvenile courts, and—of particular importance in recent years—unemployment relief. It should be added that all but two provinces (Quebec and Prince Edward Island) have, in addition to departments of health, education, and highways with their local controls, also a department of municipal affairs whose powers have expanded prodigiously with the growth of more detailed regulation of local finances and services.

One of the greatest problems of municipal government has

sprung from the restricted nature of local revenue sources at a time when responsibilities and duties have been increasing. The sources of local revenue are confined to those powers with which the province is invested and which have been delegated, in part at least, to the municipalities. These are direct taxation and license fees. Some early types of revenue have been practically withdrawn from the local authority in proportion as the provinces have taken over certain enterprises, such as sale of liquor which thereby excludes saloon licenses. Some modern fields of direct taxation have never been open to most municipalities, as is the case with income taxes. Local revenue is therefore primarily derived from taxes on property, which in the west has often taken the form of a simple land tax. The property tax provides 80% of municipal funds, but it has been incapable of providing the requisite amount of revenue and even the tax-collectors' ingenuity has been unable to devise adequate sources. Relief of municipalities has almost everywhere been sought by seeking provincial grants; yet nowhere have these grants been proportionate to the functions the communities perform at the instigation of the provinces. On the average the grants have provided less than 5% of municipal revenues, though for educational purposes the provincial assistance is several times higher. The financial difficulties of rural and urban municipalities alike have been a constant topic of discussion and during the great depression invocation of national relief has brought them into the general picture of Dominion-provincial negotiation.

Finally, it must be noted that as municipalities are agencies of the provinces, the scope of their powers is necessarily restricted by the federal division of powers. Any future redistribution of functions that extends Dominion powers in certain types of social legislation will inevitably affect the status of the local governments, their resources, administration and relationship to both provincial and Dominion governments.

#### FOR FURTHER READING:

Since the publication of Sir John Bourinot's *Local Government in Canada* (1877) there has been no general volume covering the entire subject.

A series of essays by various authors was issued as Volume II of the *University of Toronto Studies in History and Economics* (1902-07). A few of the standard volumes mentioned at the close of earlier chapters contain chapters devoted to the subject, e.g., Clement, *Canadian Constitution* (3rd. ed., 1916), ch. 34, Bourinot, *How Canada is Governed* (8th ed., 1928), and W. B. Munro, *American Influences on Canadian Government* (1929), Chapter III. For a comparative treatment see Corry, *Democratic Government and Politics*, Chapter XIV.

There have been several special studies of the financial aspects, from S. Vineberg, *Provincial and Local Taxation in Canada* (1912) and W. P. M. Kennedy and D. C. Wells, *The Law of the Taxing Power in Canada* (1931). Most useful is the study prepared for the Royal Commission on Dominion-Provincial Relations by H. C. Goldenberg, *Municipal Finance in Canada* (mimeographed, 1939). The second half of A. J. Pick, *The Administration of Paris and Montreal* (1939) is concerned with the government of Montreal. A very complete survey of another city is the (Goldenberg) *Report of the Royal Commission on Finances and Administration of the City of Winnipeg* (1930).

The chief journals published on local affairs are *The Municipal Review of Canada*, *The Canadian Municipal Journal* (the organ of the Union of Canadian Municipalities since 1901), and *The Municipal World* (organ of the Ontario Municipal Association since 1894). Occasional articles are to be found in the Dalhousie University *Bulletin of Public Affairs* and in *The Canadian Journal of Economics and Political Science*. In the latter journal reference may be made to K. G. Crawford, "The Independence of Municipal Councils", VI (1940), pp. 543-54; A. S. Abell, "Rural Municipal Difficulties in Alberta", VI (1940), pp. 555-61; C. A. Curtis, "Municipal Government in Ontario", VIII (1942), pp. 416-26; and E. J. Hanson, "Local Government Reorganisation in Alberta", XVI (1950), pp. 53-62. See also, W. W. Crouch, "Administrative Supervision of Local Government: the Canadian Experience," *American Political Science Review*, Vol. XLII (1949), pp. 509-23.

City charters are rarely available, but annual reports may usually be obtained from the city clerks. The general statutes and reports of the departments of municipal affairs are published by the provincial governments.



## CHAPTER IX

### PROBLEMS FOR THE FUTURE

#### *Constitutionalism and the Future*

The Canadian constitutional system has been in operation for three-quarters of a century, a period which has witnessed a tremendous geographical expansion and an extensive settlement of the Canadian portion of the North American continent. Under the protective shadow of Great Britain, the small and relatively inconsequential colonies along the St. Lawrence river and on the Atlantic maritime coast have emerged as the nucleus of a great new country stretching west to the Pacific Ocean and exercising dominion over an enormous empire extending far into the north. This expansion has coincided with the transition from a simple society of hunters, farmers and fishermen into a multifarious economy in which large-scale agriculture in the west is combined with specialised industry in the east. The constitutional framework established in 1867 has encouraged the progression from colonial provincialism in the British Empire to independent nationalism in the British Commonwealth of Nations and has proved no handicap to the recognition of Canada as a North American state of considerable potency in peace and war. Internally, the democratic opportunities of parliamentary government, which were first extended here to a non-British people some seventy-five years before Confederation, have deepened and broadened under the added stimulus of American social and political influence. In particular, the federal solution for uniting different peoples and preserving regional self-government has proved an admirable adjunct to the more ancient British representative institutions. The period, it is needless to say, has not been without its difficulties and problems; but the appropriateness of the constitutional

establishment of 1867 has been demonstrated by its continuance in the original form and principle.

The value of a constitutional system is not entirely shown by its permanence through a long term of years. If political stability is a prerequisite for the preservation of order and the peaceful development of a country, it is equally true that constitutional adaptability is another requirement. It is imperative that the system of government should reflect the free aspirations of the people who live thereunder and should permit the emergence of those latent tendencies that are indicative of an autonomous type of community life. Such a development has certainly been demonstrated under the Canadian constitutional system. Canadian government, in its bad features as well as in its good, is largely what Canadians have made it. Its future is unquestionably in the hands of the Canadian people, for them to preserve, modify, or transform as they see fit. Whatever criticisms may be directed against Canadian constitutional rigidities, it cannot be alleged that political evolution in the largest sense has not kept pace with popular will and social demand so far as these have been clearly and unequivocally expressed.

There is, however, the same apparent conflict between the principles of stability and adaptability as there is between the concepts of order and progress. Accordingly, constitutional government of the modern democratic type requires, for its permanence in the midst of change, a considerable quality of resilience as well as flexibility. While the governmental system must be adaptable to new developments and capable of bending instead of breaking under the impact of great strains, it must also possess the power of springing back to its basic form when the emergency passes. No constitution can be satisfactory unless it provides machinery or procedure for dealing with extraordinary conditions when they arise; but it must also be remembered that no effective constitutional system can be simply a "fair-weather" system that may be disregarded in times of stress. The concepts of constitutional government were devised and fought for in times of crisis because it is at such periods that political injustice

is found in its most malignant form. The essential principles of constitutionalism can therefore never be surrendered *in toto*; any curtailment that is temporarily accepted must be accompanied by retention of the primary practices and by guarantees for the restoration of rights when the crisis is passed. How best to establish the long-term permanence of a constitutional system has been a perpetual problem for the statesman; but there seems little doubt that in the last resort the soundest protection—if not the only real protection—lies in the determination both of the public and of politicians to adhere to the acknowledged fundamentals. The supposed guarantees of a basic law and written declarations are so many fictions and so much waste paper when they are not a living force in the character of rulers and ruled. Constitutional government cannot be given effectively to any people; it has to be earned by meritorious effort and understanding, and its preservation depends upon its being deserved and retained by each successive generation.

There is every reason for considering that the Canadian constitution has displayed in an admirable degree the qualities of stability and adaptability, that it has responded to the political needs of a new country, and that the primary constitutional rights have been secured and extended throughout the entire period. But this general approval should not be taken as implying that there are no defects or weaknesses in the system or that all the major problems have been solved and that its future is absolutely safe. The Canadian system suffers the characteristic difficulties of democratic government in modern times and is faced by the doubts and hesitations presented by the current ideological confusion. Serious controversial disputes may still arise when decisions have to be taken in connection with post-war re-organisation and the selection of new economic and social policies of reconstruction. In facing these there must be considered the special handicaps springing from certain inherited deficiencies, one or two aspects of native incompetence, and the effects of older misjudgment in borrowing from other countries.

It is not necessary to discuss the larger problems of the modern democratic dilemma or those broad questions that confront every people living under a constitutional government. There has not yet occurred a widespread loss of faith in democracy, though it may be suspected that the current pre-occupation with ideological conflicts—such as capitalism *versus* socialism, nationalism *versus* imperialism, facism *versus* communism, to name but six of the contemporary *isms*—has tended to undermine interest in constitutional methods and to focus attention on social objectives. Nothing is more destructive of democratic constitutionalism than over-emphasis on *ends* to the neglect of *means*. Constitutional government is essentially the following of a regularised political procedure which has long proved its utility as a method of attaining social or economic objectives while guarding recognised interests from sudden and ill-considered extinction. It is, of course, impossible to secure change without affecting established rights; but constitutional procedures provide a process for doing so by methods that ensure discussion, conciliation and as wide a degree of agreement as is humanly possible. The supporter of constitutional government must hope that the recent victory over dictatorship will re-establish enthusiasm for constitutionalism and restore confidence in the capacity for democracy to accomplish its ends as efficiently and decisively, though more humanely, than the rival dictatorships.

Some of the problems to be solved in the future are really old ones that had revealed themselves before the war as a result of the deficiencies in the existing system; others will no doubt emerge as consequences of the choice of future policies. Those older problems that spring from contradictions or defects in the constitutional system will already have been perceived in one form or another in the preceding pages. Their importance, and the necessity of solution, may however increase as the impact of new forces is felt. Some of the apparently novel problems will no doubt prove to be old ones in a new guise, ones previously settled in a fashion fitting an earlier day but which will require new treatment. Others may be entirely new, and for these wisdom and foresight will be required to provide guidance in seeking a solution in harmony with the spirit of the constitutional system.

One of the long-run problems concerns the representative system. Representative institutions are the bulwark of democratic government. If they are defective or are incapable of performing their functions, no formalities of status or legal revision of federalism can be effective. Some aspects of the difficulties may be noticed here. First, there is the Senate, the creation of which was a noteworthy compromise of 1867, but whose existence no longer seems compatible with the democratic process, especially in view of the part the upper chamber now takes in the amending procedure. So long as the Senate recognises its secondary and anachronistic place in the parliamentary system all may be well. But if the time came when it became a bulwark of reactionary resistance to change a very different situation would arise. It may perhaps be suggested that the Senate could be utilised as an agency for Dominion-provincial collaboration—not, it should be added, as an organ for provincial resistance, but as a permanent council for consideration of legislative and administrative matters common to the Dominion and provinces. As an advisory body it would be necessary for the members to be in reality provincial nominees, preferably with administrative experience if not entirely appointed *ex officio*, and for most of them to sit only while they represent the provincial ministry of the day. Almost everyone agrees on the desirability of promoting (if not institutionalising) more frequent consultation between the Dominion and provinces. The objection to utilising the Senate for this purpose is that revitalising the upper chamber might lead it to assume legislative ambitions and thereby wreck the parliamentary system of ministerial responsibility to the House of Commons.

Then there are the problems arising from the motive forces which drive the representative machinery, namely, parties and electors. It has long been understood that a parliamentary system is only as healthy as its political parties and that democracy thrives only with increasing public interest and participation. The present time offers two dangers: the prospective division of every country into groupings of hostile forces which do not share a consensus as to the merits of the peaceful constitutional pro-

cedure; and public indifference or cynicism about parties, politics, and politicians. Canada has not yet reached, and may never reach, the stage of being torn between rival factions or parties unwilling to acquiesce in the accustomed conventions of democratic government. More important, however, is the second point. It may be suggested that what Canada needs is greater political education. Parties might well be founded less on sectional interests and loyalty to leaders and more on advocacy of the real alternatives of public policy. There is great room for their democratisation in organisation; public accounting of their funds would be a forward step and frequent, if not annual, conferences would do much to stimulate popular consideration of controversial questions. The participation of the public, as party members with a part to play and with a responsibility to bear, needs speedy encouragement if the demoralising influence of non-voting is to be overcome. These measures, it may be noted, do not need legislation (to regulate nominations as in the United States, to compel voting as in Australia, or to introduce mathematical accuracy in representation as by proportional representation); they are within the power and duty of the politicians themselves.

Finally, a word must be said on what may prove to be the most vital issue for democracy, the relation of experts to the public. The entrance of the modern state upon an ever-widening programme of licensing, regulation, and operation of numerous economic undertakings presents a new problem to the student of constitutional government. Quite obviously, the extension of government enterprise requires increasing use of qualified personnel and makes imperative greater reliance upon a career civil service untainted by political appointment and reward. Clearly, too, the conduct of the multitudinous activities is proceeding beyond the possibility of day-to-day control by parliamentary methods. A new scope for legislative committees may be in prospect, but the probability is that politicians, by reason of their partisanship, are incompetent as critics of the administrative boards and commissions whose influence in the lives of the

citizenry may grow beyond recognition. It may be suggested that the only hope of preserving democracy in the midst of the new bureaucracy is the introduction of an extensive pattern of non-official boards of review wherever semi-judicial decisions are taken and of advisory committees representative of the interested parties wherever the regulatory agencies are policy-making. It is to be hoped that the inventiveness of democracy has not ended, for the modern state, to continue in the constitutional tradition, must combine both expertness and democracy.

Little public attention had been directed to the problems involved in the exercise of wide discretionary powers by the executive until experience in the war aroused some interest in the possible loss of private rights and protections. Exceptional measures were no doubt required for the efficient prosecution of the war and few protests were made against arbitrary conduct on the part of government agencies so long as the force of repressive action fell on seditious groups or was clearly connected with the war effort. After the cessation of hostilities, however, the noted espionage inquiry—in which individuals suspected of communicating defence secrets to a foreign power were held incommunicado and subject to interrogation outside the usual protections of legal procedure—brought the whole issue to the fore. The continuance of emergency powers into the period peace has enhanced the suspicion felt by many that the rights of individuals are definitely under attack. The issue is perhaps becoming more clearly perceived as one involving the accumulation of law-making and adjudicating functions in the hands of the executive. This trend need not be interpreted as the beginning of dictatorship (as some extremists have implied), nor is it directly subversive of the whole constitutional system. For, when all is said about arbitrary executive conduct, it remains true that under parliamentary processes responsible ministers are still accountable in the legislature for the actions of subordinate officials. It will be evident, too, that the public, political parties, and legislatures have contributed to the present situation. Much of the difficulty comes from the practice of

entering upon social or economic policies and programmes that are generally approved in principle but for which the primary outlines of law and practice have not been specified in the legislation introducing them. There is, also, a frequent intention on the part of many reformers to by-pass the standard courts as organs for applying the new social purposes to individual cases. The executive (the "governor-in council," the minister of a department, or an administrative board or commission), is frequently authorised therefore to make rules of law, enforce them as required, and apply the rules to specific cases. Though often deplored, the necessity for this procedure is widely defended as inevitable in the performance of the positive duties of the modern service state.

To offset this trend and to restore guarantees that administrative action should not impinge too harshly on the private individual, considerable support has been forthcoming for the proclamation of a Canadian bill of rights. Some criticism was expressed, for instance, during the debate on the Citizenship Act of 1946 that no rights or benefits were attached to the new status. Indeed, the tendency of the day was revealed by the provision that citizens not of Canadian birth might have their citizenship revoked by the Secretary of State "if . . . he is satisfied" as to one of four points (association with an enemy, false pretences in getting a certificate, absence from Canada for six years, or being disaffected or disloyal to His Majesty). Although a citizen so accused can demand a judicial hearing by royal commission, there is apparently no requirement that the Secretary of State shall follow the commission's report.

The absence of definite rights on the part of Canadian citizens is a matter of growing concern. Not only are they without guarantees of free movement and industry throughout the several provinces, but there are numerous restrictive regulations and discriminations on the basis of race and religion that make the concept of citizenship meaningless to considerable numbers of them. There is in fact no equality at law for all citizens. Intolerance of minorities likewise appears sporadically in pro-



vincial legislation. Whether the projected bill of rights that has been the subject of lengthy parliamentary investigation is the appropriate remedy may be doubted. It raises many constitutional difficulties in the parliamentary and federal systems. But at any rate, its public discussion reveals a growing awareness of the problem and is itself an education in constitutionalism.

*The Completion of Confederation: Newfoundland's Entrance*

The continuity of historic tendencies and problems was displayed in 1949 with the extension of Canada to the limits originally envisaged. Newfoundland had participated in the Confederation negotiations when the first project for a maritime union turned into the more grandiose scheme embracing all British North American colonies. Two delegates represented the island at the Quebec Conference of 1864 and two years later a ministry was elected to proceed with the merger. Unfortunately, the rejection of the Quebec Resolutions by Prince Edward Island and New Brunswick gave a setback to the movement, and, when reconsideration of the subject was entered upon at London late in 1866, Newfoundland, like Prince Edward Island, was absent. Nevertheless, provision for their accession was made in the British North America Act of 1867. No success met new negotiations with Newfoundland (as they did with Prince Edward Island in 1873), and in an election of 1869 Confederation prospects were completely obliterated. At that time, it must be noted, the Newfoundland economy was in an exceptionally healthy state, with the result that benefits of union were not as evident and it was easy for political agitation to evoke deep-seated insular prejudices.

Not for some thirty years did the islanders undertake to resume negotiations with Canada. The occasion (1895) was the financial crisis that had engulfed Newfoundland in the preceding year. Temporary relief was provided by Britain, but an inquiry into the economic situation by royal commission was refused by the British government unless it should also extend to political

conditions. The Canadian offer of terms of admission was rejected as unacceptable, largely because of the parsimonious financial proposals. In consequence, the islanders went their own politically independent course to Dominion Status (in all but international relations), though with increasing economic disabilities. The onset of the great depression of the 1930's again produced a severe financial crisis and practically bankrupted the government. Bitter recollection of Canadian indifference on the earlier occasion prevented any revival of desire for union, for the gulf had been widened meanwhile by Newfoundland's fishery negotiations with the United States and by the Labrador arbitration. Nevertheless, when a royal commission of inquiry was finally appointed, the document establishing it was countersigned by Canadian ministers as well as British and Newfoundland. Following the report in 1933, the Newfoundland legislature surrendered the island's status as a self-governing dominion, administration was entrusted to a British-appointed commission of six (three being non-Newfoundlanders), and the British government assumed responsibility for the financial deficit. The project of union with Canada was revived after the war when the island's treasury showed a surplus after the war-time boom, when Britain found it difficult to continue financial responsibility for a country within the dollar bloc, and when there was the inevitable desire to restore self-government in some form or other.

The considerations involved are economic, strategic and political. Newfoundland has a relatively small population, approximately three hundred thousand, which is about half that of Nova Scotia but three times that of Prince Edward Island. Limited natural resources have driven the standard of living and government services below those enjoyed in the present maritime provinces of Canada. For four centuries the staple industry has been the cod fishery, but though this occupation still provides the chief employment for half the working population, the importance of dried cod exports has fallen in fifty years from 90% to some 25% of the total exports. The newer industries—forestry and minerals—have not provided proportion-

ate employment. For the past six or seven years exceptional prosperity has been experienced as a result of large Canadian and American military expenditures, but little hope is held out for its continuance. Moreover, as the chief English market is in the sterling area whereas the main imports are from Canada and the United States, the island's trading position is made extremely vulnerable. Union with Canada would reduce the price of Canadian imports to Newfoundlanders and would undoubtedly give Canadian producers a more definitely protected market. The extension of Dominion government services—from family allowances to unemployment insurance—would carry obvious social benefits. It is probable, too, that exploitation of newly discovered mineral deposits in Labrador could be pursued on more favourable terms with the support of Canada.

The strategic position is unmistakable. With Britain unable to guarantee her defence, it is not feasible for a small country so placed as Newfoundland to hope for complete independence of action. At least as early as 1864 it was recognised that, standing as she does at the entrance to the Gulf of St. Lawrence, the defence of Newfoundland is essential to Canadian security. Canadian troops were despatched to the island to guard vital areas immediately after the evacuation of Dunkirk in 1940, and in 1944 Canada secured a ninety-nine-year lease of the Goose Bay air field in Labrador.

Politically the choice before Newfoundlanders was between a return to independent self-government and subordinate association with another country. Union with the United States was never seriously canvassed. In view of her own difficulties Britain could do no more than offer continuance of the existing regime for the next five years. In 1946 British legislation provided for the election of a constitutional convention to consider the island's future. The following year a delegation was sent to Ottawa and returned with Canada's terms of union. The convention tacitly rejected the Canadian offer by proposing a referendum with electoral choice between retention of commission rule and self-government. Despite this action, the British government con-

cluded that the minority favouring the inclusion of Confederation on the ballot (16 against 29), plus a petition of 50,000 voters, justified intervention to insert this as a third choice. On June 3, 1948 the referendum vote was 22,311 for commission government, 64,006 for Confederation, and 69,400 for restoration of responsible government. There being no clear majority, a second vote (in accordance with a previous arrangement) was taken on July 22 with choice between the two earlier questions. 78,327 votes were cast for Confederation, and 71,374 for self-government, a result which indicated that those who previously voted for Britain's responsibility now chose the Canadian terms. The Canadian Prime Minister declared that the vote was "clear and beyond possibility of misunderstanding" and invited a Newfoundland delegation to negotiate with Canada on the basis of the 1947 proposals. This conference took place shortly and on December 11, 1948 a memorandum of terms was signed on behalf of both countries.

The agreement provided that Newfoundland should form a province of Canada, keeping her boundaries and resources, with the same general status as other provinces under the British North America Acts. She would have six senators and would enter with seven members of the House of Commons (that being the proportionate number under the representative system of 1946 for a province with a population of 321,000). The former constitutional system (that is, prior to 1933) was to be restored though the lieutenant-governor would be appointed by the Canadian instead of by the British government and the upper house or legislative council should not be restored except by special legislation. The usual division of Dominion and provincial powers was to be observed (including the application of the Statute of Westminster, 1931, section 7 (2), for the Statute had never been adopted by the Newfoundland legislature), though there are a few interesting exceptions. Instead of the indecisive words of Section 93 of the British North America Act respecting education, a more specific prohibition was inserted against provincial legislation discriminating financially against

denominational schools. Newfoundland was also to keep the sale of oleo-margarine, which was at that time banned in the rest of Canada, and to continue for five years her restrictive fishery regulations that conflict with Canadian practice. Finally, Canada was to assume the public debt and to pay the new provincial government the following: the usual annual provincial subsidies, the additional subsidies for maritime provinces, the standard rental for the province's surrender of income, corporation and succession taxes, and special transitional grants for twelve years.

It will be recalled that provision had originally been made in the British North America Act of 1867 for the accession of Newfoundland to the Dominion of Canada by British order-in-council on the address of the legislatures of both Canada and the island. In 1949, when there was no Newfoundland legislature, this procedure could not be followed, though a critical group in the British Parliament, led by Sir A. P. Herbert, contended that the proper action would be to restore self-government first and then let the statutory provision be followed. Instead of this, however, the British Parliament passed the required amendment to the British North America Act on receipt of the Address from the Canadian legislature. Then, in accordance with the terms of union appended to the British statute, Newfoundland was proclaimed a province of Canada from April 1, 1949.

The introduction of Newfoundland as the tenth province brings to a happy conclusion a long-conceived project of Canada's national destiny. It is, of course, possible that the next half-century may see consideration of extension over the ancient British colonies in the West Indies, but at the moment this is not in mind and it seems likely that the latter territories will emerge as an autonomous dominion of the British Commonwealth. So far as Newfoundland is concerned, one may add that this addition of almost a third of a million in population does not itself constitute any new problem to Canada. Canada is already sufficiently diversified in territory and people to be able to adjust

herself to the new circumstances. Although Newfoundlanders may be farther advanced in distinctive nationality than any other Canadians except the French of Quebec, the unifying benefits of union may be expected to override possible causes of friction or dissatisfaction—so far, that is, as diversity can ever be made consistent with harmony.

But if the accession of Newfoundland did not itself constitute a new problem for Canada, the mode of entrance revived reconsideration of the general constitutional issue that has been implicit in Canada's situation since the passage of the Statute of Westminster, 1931. When the Address requesting the British amendment of the British North America Act was introduced into the Canadian Commons, the Opposition leader moved an amendment requiring the consultation with the provinces before such a request should be transmitted to Westminster. This motion, it is needless to say, was defeated by the Government, and the business was proceeded with as described above. Yet the urgency of the problem was apparent to all, especially in view of other alterations in the constitution that were then being contemplated.

### *Constitutional Revision: Federalism*

In the realm of external affairs, Canadian nationalism bears the evident connotation of political autonomy, independence, or sovereign statehood. It matters little whether this is regarded as a natural evolution from earlier beginnings within the framework of British practices of self-government or as a somewhat revolutionary process of severing ancient restraints in order to embark on a different future. In the realm of domestic affairs, however, there is no escape from the continuing pressure of the historic background. Today as in the past, the most potent factor in Canadian politics is the diversity of interests that reveal themselves in the federal system. Many observers believe that federalism, as usually understood, is in conflict with nationalism. Divergent opinions as to the nature of the Canadian "nation" continue to exist to a far greater degree than many avowed nationalists are

willing to admit. Criticisms directed against provincialism as an outgrowth of federalism and as disruptive of national unity are often based on the assumption that social and economic homogeneity ("a Canadian way of life") is a desirable end or purpose of governmental policy. Yet, as was pointed out in the first chapter of this book and must have received confirmation throughout the successive portions, the existence of such marked regional and racial differences in the country makes the homogeneous variety of nationalism impracticable for Canada. It is for this reason that some form of federalism or devolution is essential. Unitary government as an agency for the creation and expression of Canadian nationalist cultural unity is impossible. Whatever changes are made in the constitutional system must be founded on a recognition of diversity within the country.

The problem in Canadian federalism thus becomes one of devising machinery by which the regional differences may find expression without disrupting the Dominion and may be brought to co-operation for the general welfare. There is widespread belief that the specific system established in 1867, or at least the system as developed from that establishment, is outmoded. An *impasse* has been reached in many subjects of public importance as a result of the difficulty of securing collaboration between Dominion and provincial authorities. Inability to reach domestic agreement about the federal system has often been responsible for failure to pursue the complete elimination of those curious restraints on Canada's international status that were described in the first chapter. As recently as 1947, when abolition of judicial appeals was before the Privy Council for an opinion, the Dominion was supported by two and opposed by four provinces. Similar conflict hinders elimination of the British Parliament in constitutional amendment. No matter how widespread the desire for what has been called "the transference of the constitution" from Britain to Canada, the fact is that no consensus can be reached as to what to do when the constitution is transferred. A considerable body of opinion regards the existing federal system as the product of a "compact" made in 1867,

the terms of which constitute an obligation incapable of alteration without the consent of all the provinces. This view in effect entrusts each province with a veto on constitutional change. Theory and practice are in considerable confusion. Generally speaking, it is not claimed that provincial consent is necessary for all amendments to the British North America Act, but it is strongly held in many quarters that such consent is prerequisite for changes that affect the federal division of powers (especially Sections 91 and 92), the status of provinces as autonomous entities, and minority rights (particularly of the French). How seriously the latter is taken may be observed from the fact that Newfoundland entered Confederation with a special provision on education.

The first issue that must be disposed of before abrogation of the British Parliament's intervention can be sought, is the procedure to be followed for future constitutional revision or amendment. Thus far no agreement has been attainable. From time to time the project is mooted of summoning a popularly elected constituent convention with the object of proceeding to a thorough-going revision of the British North America Act. Such a body, though in the tradition of "North American democracy," has never been utilised in Canadian affairs; indeed, it appears incompatible with ministerial responsibility for decisions on public policy. It is eminently desirable that important questions should be determined by those experienced in and responsible to the several legislatures. If a full revision of the constitution is ever sought, it may be suggested that the best elements of governmental participation, popular acquiescence, and party representation could be combined in an advisory constituent conference representative equally of the Dominion House of Commons in proportion to its partisan composition, of the provincial legislatures (similarly representative of party complexion), and of elected members. For example, if the total membership were set at 60 (a number suitable for efficient work), 20 of them might be selected from the House of Commons, 20 from the provincial legislatures (two from each province); and 20 elected by the voters approximately in the proportion of 2 for



each million of population. Acceptance or ratification of the proposals of such a conference could then be effected by a referendum of the Australian or Swiss type, i.e., requiring a national majority and majorities in more than half the provinces.

Complete revision of the constitutional framework will probably not be thought desirable because it would re-open all the contentious problems on which a working accord has long been attained. But there is no doubt that amendment in some features is decidedly overdue. Efforts to secure adequate provincial approval for changes in specific provisions of the British North America Act have frequently been made. On occasion successful use has been made of royal commissions appointed to recommend solutions of outstanding disputes—as in the case of compensation due the prairie provinces for their earlier lack of control over their natural resources. Such inquiries, however, are effective only when the basic principle to be followed has been agreed on. The failure to implement the recommendations of the Rowell-Sirois Commission on the division of finances and powers indicates that more is required than painstaking inquiry and sage counsel. Since 1900 a number of Dominion-Provincial conferences—i.e., meetings of representatives of the ten ministries—have been held to deal with specific problems of the day. But they have failed to solve the large issue of amending procedure and in recent years have been unable to find any common ground for solving the pressing financial difficulties. Indeed, since one party is rarely in office in all the governments at once, it will be evident that general political differences may tend to accentuate the standard inter-governmental rivalries. With no solution in sight, the consequence is to perpetuate indefinitely the unsatisfactory position in which the Dominion Parliament procures amendments within an indefinite area by parliamentary address followed by British enactment. To some extent at least, therefore, the very authority that the provinces intended keeping from the Dominion legislature (by Section 7 of the Statute of Westminster) has fallen to it by default.

Here it should be noted that the restriction on the Dominion Parliament applies only to the British North America Acts. Other British statutes, whether touching the federal system or not, are subject to amendment by Dominion legislation. The recent abolition of judicial appeals to the Privy Council was an example. These appeals were not protected by the British North America Act of 1867, and they were cut off by simple Dominion enactment at the end of 1949 without any consultation with the provinces. An amendment to the Canadian statute constituting the Supreme Court effected this by deleting the former section that had preserved the appeals. The new section reads:

The Supreme Court shall have, hold and exercise exclusive ultimate appellate civil and criminal jurisdiction within and for Canada; and the judgment of the Court shall, in all cases, be final and conclusive.

This not only extinguished appeals under British statutes, but, with other new sections, also prevented appeals from provincial courts to the outside authority and imposed on them appeals to the Supreme Court of Canada. As all political parties were pledged to the abrogation of Privy Council appeals this change met little or no opposition. The provincial governments that might have objected (as some had done in the "reference" on the subject) were neither consulted nor capable of protesting in parliament.

The chief problem, of course, lies with amendments requiring a change in the terms of the British North America Acts. The haphazard fashion in which constitutional questions have been handled in the past was demonstrated by the final episode of the critical year, 1949. Observing that the provinces have the power of altering their constitutions under Section 92 (1) of the British North America Act, the Dominion government proposed to secure an equivalent authority inserted as (1A) of Section 91. This section, it will be remembered, is already an incredibly complicated one; the new addition makes confusion worse confounded. When it was introduced for discussion the

Government was forced to accept an amendment that ran the new sub-section to fourteen lines with its exceptions and exceptions to the exceptions.<sup>1</sup>

Even with the passage of this latest amendment it is clear that the problem has not been solved. Although the Dominion Parliament may now amend the British North America Acts so far as concerns the federal constitution and the provincial legislatures can amend their constitutions, there are still several elements that cannot be amended in Canada without resort to the British Parliament. And it is still undetermined just how far the Dominion authority extends in trenching upon the existing division of powers. Accordingly, to satisfy the critics, the Dominion Government announced its intention of summoning a provincial conference at which the several provinces could agree among themselves as to future amending procedure. This conference was duly held in January, 1950, but adjourned after a few days of preliminary exposition, leaving particular discussions to future meetings of their respective attorneys-general. As might be expected, the Dominion is relatively little concerned in the matter. If the provinces can agree, then an unpleasant element of dissension is removed; but if the provinces end up in a wrangle, as has been past experience, the Dominion is left in its present superior position of holding the key to future constitutional amendments by virtue of being the body that invokes British intervention.

No one disputes the urgency of new constitutional arrangements to overcome some of the handicaps of the existing system. One of the greatest problems is that of public finance. During the great depression of the 1930's, when the inability of provincial revenues to provide means for carrying out increasing economic and social obligations was most marked, a partial solution was found in federal grants and loans to the most distressed provinces. During the war, when the Dominion was faced by the imperative need for unprecedented revenues, a temporary solution was found in a series of agreements between the Dominion and provinces by which the latter withdrew from certain

<sup>1</sup>Appendix, p. 334.

tax fields in return for stipulated payments by the Dominion. These agreements ended in 1947. Prior to their lapsing, successive Dominion-provincial conferences had failed to provide a new division of revenues that would satisfy all parties. At last, however, the Dominion government secured the assent of seven of the nine provinces to a new series of temporary arrangements. In return for provincial withdrawal from income and corporation taxes, the Dominion government undertook to pay the provinces at their option (a) \$12.75 per capita of the 1942 provincial population and one-half of the provincial income and corporation taxes collected in 1940 or (b) a flat rate of \$18 per capita. (A special agreement with Prince Edward Island substituted a slightly higher payment of a lump sum for the above per capita schemes). These agreements do not constitute the fully-rounded refashioning of financial powers that was originally hoped for; they are in addition to the numerous other special arrangements between the Dominion and provinces individually and collectively, and are limited to a five-year period. Moreover, the two wealthiest provinces—Ontario and Quebec—with nearly 60% of the country's population, have not acceded to them as yet. Although the Minister of Finance, in introducing the new agreements to Parliament in July, 1947, made some further promises respecting Dominion policy, it was clear that the limited nature of the agreements severely curtails the desirable arrangement by which the national government can take over supervision and responsibility for stability in trade and industry and enter upon a number of important social enterprises. The prospect of a fully balanced programme for economic and social planning thus is still in the distant future.

The basic financial difficulty in the Canadian federal system therefore continues to prevail: the Dominion possesses revenues far exceeding its economic jurisdiction, while the provinces retain exclusive control over fields that their limited resources do not permit them to cope with. Put in terms of the standing disputes this means that the Dominion is restricted in legislative and administrative capacity by the insistence of the provinces

on their control over a wide variety of matters in which national regulation appears desirable to many observers. These handicaps became most prominent during the great depression. It would have been impossible, too, to have conducted the war effort on anything like the efficient national scale that was pursued, if it had not been acknowledged that in time of war the normal division of functions is suspended. Effective Canadian participation in the war required the adoption of a well-rounded series of nation-wide controls and regulations concerning currency, housing, prices, employment, and manufacturing. In time of peace many of these powers are either entirely or partly beyond the scope of Dominion authority, for some of them have been interpreted as falling within the classes of subjects assigned exclusively to the provinces by Section 92 of the British North America Act. The outbreak of war is, fortunately enough, conceded to introduce an exceptional extension of Dominion powers to cover practically all necessities. On the face of it, however, this extension of central authority is purely temporary and lapses with the return of peace. It would have been calamitous if, in accordance with the precedents of the first world war, all controls had abruptly ended in 1945 with the cessation of hostilities, and it would have been preposterous if reliance for their continuance had to be placed on the technicality that no peace treaty had yet been entered into with the defeated enemy, for such may not be the case for many years. The requirements of an orderly transition to peace-time rehabilitation and reconstruction evidently implied retention of at least some controls either by a new constitutional arrangement or by extension of the "emergency" powers. In consequence of the failure to attain an appropriate revision of the federal division of powers for the new problems, the latter device has been the one adopted. In 1945 a National Emergency Transitional Powers Act was passed by the Dominion Parliament (and extended in 1946 and 1947) to authorise the continuance of such executive orders and regulations as had been put into effect as war measures and were still needed. From the standpoint of strict federalism this

is a most unsatisfactory situation, for it is constitutionally improper for one government to be able to enlarge its jurisdiction under cover of a declaration of emergency. Yet no one apparently disputes the need for additional central powers to meet the crises that seem to be a somewhat permanent feature of the modern world.

The most comprehensive scheme that has wide support is the proposal to effect some redistribution of the subjects allotted to Dominion and provincial legislatures. Two methods of attack on the problem are suggested. One is to confer on the Dominion some subjects previously in dispute, such as social insurance, marketing of natural products, and the general regulation of trade and commerce, matters which are either beyond the financial capacity of the provinces or clearly cannot be brought under adequate provincial control. The other is to designate quite specifically the provincial responsibility in certain cases now in doubt or hitherto unexercised and to provide additional provincial revenues by a new apportionment of Dominion subsidies to the provinces adequate for their responsibilities. These two methods are, in general terms, the recommendations of the Royal Commission on Dominion-Provincial Relations, which reported in 1940. Thus far only one of the suggestions has been acted on—the amendment of Section 91 in 1940 by the insertion of unemployment insurance among the Dominion powers. The merit of this proposal lies in the fact that it involves the least tampering with the general constitutional foundation and can be proceeded with as occasion presents itself. The proposals of the Rowell-Sirois Report remain the high point of wisdom and will no doubt be long discussed. It is not yet too late to attain the benefits of their suggestions, for the continuance of emergency powers has postponed for the moment return to the chaotic situation of the pre-war period. But so far all efforts of Dominion and provincial governments to reach a consensus of opinion on the permanent redivision of such fields as finance, labour regulation, industry, and social services have failed.

Despite the unwillingness to proceed to a systematic renovation of the federal system, a number of interesting tendencies may be observed that may mitigate the evils of the situation if not fully relieve them. For one thing, the central government proceeds to exercise on occasion all the powers it needs—as is also done in the United States—to meet crises, in the expectation that the emergency calling them forth will have disappeared by the time they are tested in the courts or that judicial opinion will then accept the emergency concept as covering the case—as occurred in 1950 when Dominion rent controls were upheld. Then, too, it is hoped that the abolition of appeals to the Privy Council (usually blamed for extending provincial jurisdiction) will allow the Supreme Court of Canada to pursue a new centralising course. The latter, it may be remarked, is an optimistic belief not entirely warranted by American and Australian experience. It rests on the supposition that the Supreme Court, as a body familiar with the Canadian environment, will persist continuously in giving a liberal or social reform interpretation to the words of Section 91 of the British North America Act, emphasising the Parliament's power to make laws for "the peace, order, and good government of Canada." There is, however, always the possibility that the Supreme Court will read the other curiously complicated and limiting words of both Sections 91 and 92 and introduce similar or new restrictive interpretations. And this is exactly what occurred in 1949 in the oleomargarine "reference," when a regulation enforced by the Dominion for many decades was held to be *ultra vires*. This development would be inevitable if, as some propose, a bill of rights and a specific guarantee of minority rights were to be added to the fundamental constitutional document. Nevertheless, it will be recalled that the Supreme Court's status is not as secure, constitutionally speaking, as that of the American and Australian courts. Its jurisdiction is derived from Dominion statutes, and federal courts are therefore more open to parliamentary influence than elsewhere.

More important, perhaps, for the immediate future is the development of de facto cooperation and collaboration between Dominion and provinces. At the moment this is most evident at the non-political level, as is revealed by the numerous conferences of experts and administrators from the several governments to discuss mutual problems and coordination of activities where they overlap or are jointly operated. This has become a necessity in the midst of divided subjects and has been encouraged by Dominion grants for local purposes that require provincial or local administration. In war-time, in fact, the practice of designating provincial officials as Dominion agents for certain purposes provides a precedent that cannot be completely abandoned. How far the concept of two distinct and unrelated fields of authority has broken down may be observed from the promise of the Dominion Minister of Finance, at the time of the temporary financial agreements of 1947, that the Dominion government would proceed to secure a constitutional amendment permitting mutual delegation of power as between Dominion and provinces—a practice now prevented by the current views of strictly divided jurisdictions. There is in prospect, therefore, a development that may introduce a novel type of federal relationship. Though no overt movement exists to abandon the existing division of authority into separate jurisdictions, the completeness and rigidity of the division is in process of modification. Special agreements, parallel legislation, delegation of powers, and combined or joint administration under varying conditions of Dominion supervision, inspection, advice, or financing may perhaps prove the way to a new federalism. Without redrafting the British North America Act to enlarge the areas of concurrent and joint action, it may still be possible to accomplish the same result so that national standards can be established on public health, education, labour conditions, etc., by agreements authorising desirable co-operation of Dominion and provincial agencies as has long been done in justice and policing.



*Canada in the World of States*

In the course of the past thirty years Canada has advanced to complete autonomy in domestic and constitutional affairs at a rate limited only by her own internal indecision. So far as external affairs are concerned the goal was perhaps more clearly defined, if not easier of access. Many of the influences handicapping internal autonomy have also been factors in attaining external autonomy. In both aspects of rise to statehood, "status" was the magic term. "Dominion Status" meant formal equality with Britain in the empire and also gave entrance to the society of nations.

There are few remnants of the earlier inferior dependence, and such as remain are retained, temporarily at least, as symbols of the historic connection with Britain. It is this connection that requires the use of the phrase "external affairs" to cover relations with earlier associates of the empire as well as with foreign countries. The transformation of the British Empire into the present loosely-articulated Commonwealth of Nations was begun under Canadian prodding, though it has recently been pushed to greater lengths by more insistent partners. The terms "Dominion Status" and "British" are now practically eliminated as descriptive or definitive of the Commonwealth and its members. They may withdraw at will (and in withdrawing retain many privileges); they may remain as republics without the symbolism of the crown; and even those retaining the crown may sever the common allegiance of the subjects. On her side, however, Canada retains the monarchical trappings with her own nominee as viceroy (under the new letters-patent of 1947), sings "God Save the King" along with her own national anthems, and acknowledges British titles of honour but awards none herself. The common citizenship in the Commonwealth is indicated by joint use of the Union Jack and the Canadian flag (the red ensign with Canadian arms in the fly, under regulations of 1945). Canadians have constituted a special category of British subjects for immigration purposes since 1910 and for international purposes since 1920. The Citizenship Act of 1946

further specifies the connection: all persons born or naturalised in Canada and other British subjects of five years' domicile in the country are entitled to a certificate as Canadian citizens—but they do not thereby cease to be British subjects.

All of the above matters have been bitterly contested in recent years, and some of them may be again. But the struggle for status, in or out of the Commonwealth, is over. No one questions Canada's position as an independent country capable of undertaking the rights and duties of statehood. Attention for the future must be directed to the formulation of a positive national policy in economic, political and strategic matters.

Like every other belligerent country, Canada has been forced to face the grave issues of the peace settlement and of post-war reconstruction. The nature of Canadian participation in the maintenance of peace necessarily depends on the content of prospective international programmes. This will require a redefinition of Canada's economic and political relations with the rest of the world. In a world of increasing interdependence, the economic and political aspects of post-war reconstruction are evidently closely related to each other. Without international peace no stable national economy will be possible; without appropriate adjustment of national economy in each country no permanent peace can be expected. These issues are universal in the sense that they are common to the peoples of every country and continent. It is proper therefore that they should often be discussed in the general terms of international co-operation, for the preservation of peace and the restoration of world trade and industry are beyond the capacity of any one country. At the same time, however, it is not enough to debate the general aspects of collective action. Any type of rehabilitation in peace will necessarily have a specific incidence in each country and must be studied accordingly for its particular application to each community. Whether the post-war world is planned nationally, regionally, or internationally, the differences of geographical position, economic organisation and political status will create a diversity of duties and opportunities as well as a multiplicity

of expectations and possibilities for the several parts of the world. Needless to say, despite the great uncertainties of the time, considerable attention is being devoted to the study of Canada's future relations and adjustments. It is not intended to discuss these except to notice the chief tendencies of political significance.

Isolation has never been the avowed policy of the Canadian people. At the close of the first world war, Canada entered all branches of the League establishment as a member of the Assembly, International Labour Organisation, and World Court; she has continued her association with Great Britain and declared war on Germany in 1939 without being attacked directly; and she has frequently sought closer relations with the United States. The chief centre of systematic intransigent isolationism has been the province of Quebec, for the French had completely severed all European ties (other than religious); yet even there new forces are at work to break down the ancient provincialism. But though there is not widespread acceptance of the theoretical foundations of isolationism, the sentiment is, of course, fostered in Canada as elsewhere by the usual forces which operate in every country—namely, distrust of the motives of other peoples, fear of the competition of immigrant labour and imported goods, hostility to innovations in ideas and customs drawn from abroad—and finds its justification in the narrower forms of nationalism.

The chief handicap on Canadian co-operation with other countries is to be found in disagreement as to which countries are suitable for collaboration. It is usual to say that Canada's external policy can be directed to closer relations with Great Britain, the United States, or all other countries willing to co-operate. Historically, of course, a specially close connection with Britain has been assumed and advocates of its continuance have long been designated as "imperialists." Nevertheless, the direction of Canadian national development has been quite definitely away from inclusion within the British Empire so far as this implies subordination or "colonialism." The result has been a decided tendency to minimise or eliminate the organs of Canadian-British co-operation which have persisted from colonial

days and to prevent the establishment of new permanent agencies for joint action. Thus, although Canada entered the war against Germany one week after Britain, the Canadian government had previously refused to make any commitments or to participate in consultation with other members of the British Commonwealth of Nations on foreign policy or defence. It is true, of course, that during the war co-operation with Britain in the fullest sense—from a billion dollar gift to joint strategic planning and economic controls—was willingly pursued. But war-time necessities and sentimental desires never implied any abandonment of Canadian determination to follow independent courses in the long run. One outcome of the second world war, however, has been a great diminution of British imperialist influence in the world. Old fears of dominance from that quarter have therefore collapsed, to be followed at times by the suspicion that the comforting protection of the British navy will no longer embrace Canada. That the withdrawal of British imperial might, which Canadians encouraged, leaves a vacuum in the world of power politics is a consideration of vital interest to Canada. For Britain remains Canada's best customer for agricultural exports and her first line of defence on the European side. It accounts for Canadian desire to assist the restoration of Britain's prosperity and to retain those military connections that have long existed—but always with full freedom of action.

Canada's geographical position makes Canadian-American co-operation an increasingly attractive alternative, especially when clothed in the current terminology of "North Americanism." This is particularly urged by the anti-British or anti-imperialist groups. To many Canadians, however, and especially to the "imperialists", this policy also seems to run counter to the origin of the Canadian people whose existence separate from the American people sprang from rejection of republicanism and from affection for Britain and the monarchy. Projects for institutionalising co-operation with the United States—such as commercial reciprocity—are always open to criticism as steps to "annexation." The United States, too, has been as dilatory,

if not even more reluctant than Britain, in admitting Canadian autonomous status and—for internal American constitutional reasons—has not been an easy country to deal with. Accordingly, despite the best personal relations of Canadians and Americans, the only agency of permanent co-operation between the two countries in 1939 was the joint boundary commission established in 1909. The extension of the Monroe Doctrine to include Canada, with President Roosevelt's avowal that the United States could not stand by if Canadian territory was attacked (by Hitler), was warmly received and out of it sprang the co-ordination of American and Canadian defence policies that continues to be present. Yet the present Canadian-American relationship is not without its problems. For one thing the economic position is unsatisfactory. Canada is in the "dollar bloc" but suffers an adverse balance of trade with the United States, whereas to the "sterling" countries who take most of her exports she is a creditor country. It became increasingly difficult therefore for her to continue a balanced economy with the type of social services desired while the pressure of American economic life proceeds in a somewhat different fashion. Then, too, the development of American foreign policy imposes some doubts. Some fear of resurgent American expansionism, as experienced in former boundary disputes, has been fostered by the special status that was demanded for American troops in Canada during the war and by her refusal to surrender Newfoundland bases granted by Britain in her hour of adversity. The greatest fear is that she has only evaded British world policy to fall into American global concepts. The sudden emergence of the Soviet Union, Canada's neighbour across the northern ocean, into a role of first rank importance carries with it serious consequences in so far as the United States tends to align states for or against Russia. Canadians, much as they may dislike communism, cannot relish the possibility of their country being the Belgium of American-Soviet hostilities, particularly since the advent of the atomic bomb. Though keenly aware of the undefended nature

of the Arctic frontier and quite willing to conduct joint defence in this respect, Canada has preserved the policy of not conceding permanent rights for United States bases.

In proportion as imperialist and North American sentiments tended to cancel each other and prevent active co-operation with either Britain or the United States, the Canadian government directed its efforts to the third policy—that of collaboration with all countries willing to participate, a policy known as “internationalism.” On the face of it, this policy had the advantage of maintaining Canada’s independent status and of offending neither the anti-imperialists nor the anti-Americans. Unfortunately, however, the League system, on which the policy rested, collapsed in the late 1930’s. This was a severe blow to the official policy; yet it must be recorded that Canadian endorsement of the League had not been wholehearted. The internal conflicts which impaired co-operation with Britain and the United States also neutralised “internationalism.” “North Americanism” had been permeated with American isolationism and many “imperialists” had little regret at the decline of the League of Nations, with the general result that Canadian official policy had never fully supported any system of collective security that implied an active international control of national action.

It will be observed that there is one principle of Canadian policy that evokes approval in nearly all quarters. This is the insistence on national independence or autonomy as a condition of Canadian co-operation with Britain, the United States or any wider league or association. Hitherto independence has not been widely advocated in order to pursue an isolationist policy, but as a matter of self-respect and status. By this time, however, it ought to be realised that effective co-operation, whether in alliance or in a league, is not a matter of voluntary aid in a crisis but implies a willingness to establish permanent organs of joint action and to accept in advance responsibilities and restraints on freedom. In few countries is the failure of the League better understood than in Canada, nor is it anywhere more keenly appreciated that an effective United Nations is essential for the

preservation of the independence of the smaller states. Indeed, as the European phase of the second world war drew to a close, it must be recorded that Canada displayed consciousness of the responsibilities flowing from the status she had attained as well as pride in the economic and military power that had been built up during the war, and began to take her part in the establishment of such organisations as the United Nations Relief and Rehabilitation Administration and in the drafting of the United Nations Charter at San Francisco in the spring of 1945. Since that time she has been a participant in every United Nations organisation and activity, and has played an exceptional role in economic aid to Europe and in receiving refugees. Though not elected to the first Security Council, Canada, as a participant in the development of the atomic bomb, secured admission to the U.N. atomic energy commission and has pushed vigorously for international control. But for several reasons, among which her proximity to the United States ranks high, she has allowed Australia to assume leadership of smaller states in criticism of the Great Powers. Moreover, in 1948-9, when it became apparent that the United Nations was not yet reliable as a guarantor of peace, she was a prime mover in the North Atlantic Pact as a substitute security organisation and has embarked enthusiastically in the military and economic collaboration that it entails.

#### FOR FURTHER READING:

During the war a surprisingly extensive literature was published respecting future problems. The following are representative titles: H. M. Cassidy, *Social Security and Reconstruction in Canada* (1943); C. A. Ashley (ed.), *Reconstruction in Canada* (1943); A. Brady and F. R. Scott (eds.), *Canada after the War* (1943). Among government publications most interest was aroused by L. C. Marsh's *Report on Social Security for Canada* for the Advisory Committee on Reconstruction (1943).

An admirable survey of the Newfoundland position is to be found in R. A. Mackay (ed.), *Newfoundland: Economic, Diplomatic and Strategic Studies* (1946). For the preliminaries of Union see *Report and Documents relating to the negotiations for the Union of Newfoundland* (Ottawa, 1949); later developments may be followed in the parliamentary proceedings, in the *Journal of the Parliaments of the Commonwealth*, Vol. XXX, or in *External Affairs*, the monthly bulletin of the Department of that name.

On the international scene reference may be made to M. Eastman, *Canada at Geneva* (1946) and G. Carter, *The British Commonwealth and International Security* (1947). The Canadian Institute of International Affairs now publishes, in addition to special works, a quarterly *International Journal* (1946—). Canadian policy may also be followed in the monthly bulletin of the department, as named in the preceding paragraph, and in its annual *Report* and *Canada and the United Nations* (1947—).



## APPENDIX

## A. THE BRITISH NORTH AMERICA ACT, 1867 (AS AMENDED)

Like other British statutes, this Act has been amended and affected, permanently or temporarily, by later enactments of the British Parliament. Some of these enactments have been designated as British North America Acts—such as those of 1871, 1886, 1907, 1915, 1916, 1930, 1940, 1943 and 1946; some have borne other titles—such as Rupert's Land Act of 1868, Parliament of Canada Act of 1875, Canadian Senate (Appointment of Speaker) Act of 1895, Statute of Westminster, 1931, etc.

There is no official revised edition of the Act of 1867. The Acts which bear the name "British North America Act" (excepting that of 1916) are cited as "The British North America Acts, 1867-1949." The following copy contains all the later relevant alterations, with notes of supplementary British statutes. It has been thought advisable to make the insertions at the appropriate places rather than to place all amending Acts after the main statute, as is usual.

To illustrate the amending procedure, the latest Address (1949) follows the Act of 1867.

## THE BRITISH NORTH AMERICA ACT, 1867.

30 and 31 Vic. c. 3.

*An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for purposes connected therewith.*

[29 March, 1867].

WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick, have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

### I.—PRELIMINARY.

1. This Act may be cited as "The British North America Act, 1867." Short Title.

2. The Provisions of this Act referring to Her Majesty the Queen, extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.<sup>1</sup> Application of Provisions referring to the Queen.

<sup>1</sup>Under the Royal and Parliamentary Titles Act, 1927 (as amended in 1947), the Royal Style now reads: By the Grace of God, King of Great Britain, Ireland, and the British Dominions beyond the Seas, Defender of the Faith.

For legislation respecting succession, see below, p. 339.

## II.—UNION.

Declara-  
tion of  
Union.

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick, shall form and be One Dominion under the name of Canada; and on and after that Day, those Three Provinces shall form and be One Dominion under that Name accordingly.

Construc-  
tion of  
subse-  
quent pro-  
visions of  
Act.

4. The subsequent Provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the name Canada shall be taken to mean Canada as constituted under this Act.

Four Pro-  
vinces.

5. Canada shall be divided into four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.<sup>2</sup>

Provinces  
of Ontario  
and Que-  
bec.

6. The Parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form Two Separate Provinces. The Part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario;<sup>3</sup> and the Part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

Provinces  
of Nova  
Scotia and  
New  
Brun-  
swick.

7. The Provinces of Nova Scotia and New Brunswick shall have the same Limits as at the passing of this Act.

Decennial  
Census.

8. In the general Census of the Population of Canada which is hereby required to be taken in the year One thousand eight hundred and seventy-one, and in every Tenth Year thereafter, the respective Populations of the Four Provinces shall be distinguished.

<sup>2</sup>Six additional provinces now exist. See Section 146 as amended.

<sup>3</sup>The western boundary of Ontario was further delimited by The Canada (Ontario Boundary) Act, 1889. For the authority by which changes in boundaries may be made by Canadian legislation, see British North America Act, 1871, Section 3 (inserted below after Section 146).

## III. EXECUTIVE POWER.

9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

Declaration of Executive power in the Queen.

10. The Provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the Time being of Canada, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of Canada on Behalf and in the Name of the Queen, by whatever Title he is designated.

Application of Provisions referring to the Governor-General.

11. There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor-General.

Constitution of Privy Council for Canada.

12. All Powers, Authorities, and Functions which under any Act of Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of Members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union, in relation to the Government of Canada, be vested in and exercisable by the Governor-General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada, or any Members thereof, or by the Governor-General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the

All powers under Acts to be exercised by Governor-General with advice of Privy Council, or alone.

United Kingdom of Great Britain and Ireland)<sup>4</sup> to be abolished or altered by the Parliament of Canada.

Applica-  
tion of  
Provisions  
referring  
to  
Governor-  
General in  
Council.

13. The Provisions of this Act, referring to the Governor-General in Council shall be construed as referring to the Governor-General acting by and with the Advice of the Queen's Privy Council for Canada.

Power to  
Her  
Majesty to  
authorize  
Governor-  
General  
to appoint  
Deputies.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor-General from Time to Time to appoint any Person or any Persons, jointly or severally, to be his Deputy or Deputies within any Part or Parts of Canada, and in that Capacity to exercise, during the Pleasure of the Governor-General, such of the Powers, Authorities, and Functions of the Governor-General, as the Governor-General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions expressed or given by the Queen; but the Appointment of such a Deputy or Deputies shall not affect the Exercise by the Governor-General himself of any Power, Authority, or Function.

Command  
of Armed  
Forces to  
continue  
to be  
vested in  
the Queen.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

Seat of  
Govern-  
ment of  
Canada.

16. Until the Queen otherwise directs, the Seat of Government of Canada shall be Ottawa.

#### IV. LEGISLATIVE POWER.

Constitu-  
tion of  
Parlia-  
ment of  
Canada.

17. There shall be one Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges,  
&c., of  
Houses.

18. The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from Time to Time defined by Act of the Parliament of Canada, but so that *any Act of the Parliament of Canada defining such Privileges, Immunities, and Powers shall not confer any Privileges, Immunities, or*

30 & 31  
Vic. c.3

<sup>4</sup>Under the Royal and Parliamentary Titles Act, 1927, the British Parliament is now the "Parliament of the United Kingdom of Great Britain and Northern Ireland."

For the repeal of the chief British Acts coming within this clause of Section 12 of the text, see Statute of Westminster, 1931, below, p. 336.

*Powers exceeding* those at the passing of *such* Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.<sup>5</sup>

19. The Parliament of Canada shall be called together not later than Six Months after the Union.

First Session of the Parliament of Canada.

20. There shall be a Session of the Parliament of Canada once at least in every year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first Sitting in the next Session.

Yearly Session of the Parliament of Canada.

### *The Senate.*

21. The Senate shall, subject to the Provisions of this Act, consist of *Ninety-six* Members, who shall be styled Senators.<sup>6</sup>

Number of Senators.

22. In relation to the Constitution of the Senate, Canada shall be deemed to consist of *Four* Divisions:—

Representation of Provinces in Senate.

(1.) Ontario;

(2.) Quebec;

(3.) The Maritime Provinces, Nova Scotia, New Brunswick, and Prince Edward Island;

(4.) *The Western Provinces of Manitoba, British Columbia, Saskatchewan, and Alberta*; which *four* Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by Twenty-four Senators, Quebec by Twenty-four Senators; the Maritime Provinces and Prince Edward Island by Twenty-four Senators, *ten* thereof representing Nova Scotia, *ten* thereof representing New Brunswick, and *four* thereof representing Prince Edward Island; the Western Provinces by *twenty-four* senators, *six* thereof representing Manitoba, *six* thereof representing British Columbia, *six* thereof representing Saskatchewan, and *six* thereof representing Alberta.<sup>7</sup>

<sup>5</sup>The italicised words of Section 18 were added by the Parliament of Canada Act, 1875, in place of the previous words: "the same shall never exceed . . . this."

<sup>6</sup>The italicised number was inserted, in place of "seventy-two", by the British North America Act, 1915, Section 1 (1-i). See also Sections 146 and 147 as amended.

<sup>7</sup>The creation of a fourth division, in order to regularise representation of the western provinces, was made by the Act of 1915, Section 1, (1-ii).

In the case of Quebec, each of the Twenty-four Senators representing that Province shall be appointed for one of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of Consolidated Statutes of Canada.

Qualifica-  
tions of  
Senator.

23. The Qualifications of a Senator shall be as follows:—

- (1.) He shall be of the full Age of Thirty years.
- (2.) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union.
- (3.) He shall be legally or equitably seized as a Freehold for his own Use and Benefit of Lands or Tenements held in free and Common Soccage, or seized or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture, within the Province for which he is appointed, of the value of Four Thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages and Incumbrances due or payable out of, or charged on or affecting the same;
- (4.) His Real and Personal Property shall be together worth four Thousand Dollars over and above his Debts and Liabilities;
- (5.) He shall be resident in the Province for which he is appointed:
- (6.) In the case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

Summons  
of Senator.

24. The Governor-General shall from Time to Time, in the Queen's Name by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so sum-



moned shall become and be a Member of the Senate and a Senator.

25. Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

Summons of First body of Senators.

26. If at any Time, on the Recommendation of the Governor-General, the Queen thinks fit to direct that *four* or *eight* Members be added to the Senate, the Governor-General may by Summons to *four* or *eight* qualified Persons (as the case may be), representing equally the *four* Divisions of Canada, add to the Senate accordingly.<sup>8</sup>

Addition of Senators in certain cases.

27. In case of such Addition being at any Time made the Governor-General of *Canada* shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, *to represent one of the four Divisions until such Division is represented by Twenty-four Senators and no more.*<sup>9</sup>

Reduction of Senate to normal number.

28. The Number of Senators shall not at any Time exceed *one hundred and four.*<sup>10</sup>

Maximum number of Senators.

29. A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

Tenure of place in Senate.

30. A Senator may by Writing under his Hand, addressed to the Governor-General, resign his Place in the Senate, and thereupon the same shall be vacant.

Resignation of place in Senate.

31. The Place of a Senator shall become Vacant in any of the following cases:—

Disqualification of Senators.

- (1.) If for two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate.
- (2.) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience or Adherence to a Foreign Power, or does an Act whereby

<sup>8</sup>The change from "three or six" to "four or eight" was made by the Act of 1915, Section 1 (1-iii) in consequence of the increase of the divisions to four.

<sup>9</sup>Some slight alteration of wording was made in the change expected by the Act of 1915, Section 1 (1-iv).

<sup>10</sup>The new maximum displaced the original "Seventy-eight" by the Act of 1915, Section 1 (1-v).

he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen of a Foreign Power;

- (3.) If he is adjudged Bankrupt or Insolvent, or applies for the benefit of any Law relating to Insolvent Debtors, or becomes a Public Defaulter;
- (4.) If he is attainted of Treason, or convicted of Felony or of any infamous Crime;
- (5.) If he ceases to be qualified in respect of Property or of Residence; provided that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of Government of Canada while holding an Office under that Government requiring his Presence there.

Summons  
on vacancy  
in Senate.

32. When a Vacancy happens in the Senate by Resignation, Death or otherwise, the Governor-General shall, by Summons to a fit and qualified Person, fill the Vacancy.

Questions  
as to quali-  
fications  
and  
vacancies  
in Senate.

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate, the same shall be heard and determined by the Senate.

Appoint-  
ment of  
Speaker  
of  
Senate.

34. The Governor-General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead.<sup>11</sup>

Quorum of  
Senate.

35. Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the exercise of its Powers.

Voting in  
Senate.

36. Questions arising in the Senate shall be decided by a majority of Voices, and the Speaker shall in all Cases have a vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

### *The House of Commons.*

Constitu-  
tion of  
House of  
Commons  
in Canada.

37. The House of Commons shall, subject to the Provisions of this Act, consist of One hundred and eighty-one Members, of whom Eighty-two shall be elected for Ontario,

<sup>11</sup>The Canadian Senate (Appointment of Deputy Speaker) Act, 1895, was passed to remove the doubt as to validity of Canadian legislation providing for the appointment of a deputy-speaker.

Sixty-five for Quebec, Nineteen for Nova Scotia, and Fifteen for New Brunswick.

38. The Governor-General shall from Time to Time, in the Queen's name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons. Summon-  
ing of  
House of  
Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons. Senators  
not to sit  
in House  
of Com-  
mons.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia and New Brunswick, shall, for the purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows:— Electoral  
District  
of the four  
Provinces.

### 1. *ONTARIO.*

Ontario shall be divided into the Counties, Ridings of Counties, Cities, Parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return one Member.

### 2. *QUEBEC.*

Quebec shall be divided into Sixty-five Electoral Districts, composed of the Sixty-five Electoral Divisions into which Lower Canada is, at the passing of this Act, divided under Chapter Two of the Consolidated Statutes of Canada, Chapter Seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the Twenty-third Year of the Queen, Chapter One, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the purposes of this Act an Electoral District entitled to return One Member.

### 3. *NOVA SCOTIA.*

Each of the Eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return Two Members, and each of the other Counties One Member.

### 4. *NEW BRUNSWICK.*

Each of the Fourteen Counties into which New Brunswick is divided, including the City and County of St John,

shall be an Electoral District. The City of St John shall also be a separate Electoral District. Each of those Fifteen Electoral Districts shall be entitled to return One Member.

Continu-  
ance of  
existing  
Election  
Laws until  
Parlia-  
ment  
of Canada  
otherwise  
provides.

41. Until the Parliament of Canada otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of Controverted Elections and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs, in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.

Proviso as  
to Algoma.

Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote.

Writs for  
first  
Election.

42. For the First Election of Members to serve in the House of Commons, the Governor-General shall cause Writs to be issued by such Person, in such Form and addressed to such Returning Officers as he thinks fit.

The Person issuing Writs under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the issuing of Writs for the Election of Members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia or New Brunswick; and the Returning Officers to whom Writs are directed under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the returning of Writs for the Election of Members to serve in the same respective House of Assembly or Legislative Assembly.

As to  
Casual  
Vacancies.

43. In case a Vacancy in Representation in the House of Commons of any Electoral District happens before the

Meeting of the Parliament, or after the Meeting of the Parliament before Provision is made by the Parliament in this behalf, the Provisions of the last foregoing Section of this Act shall extend and apply to the issuing and returning of a Writ in respect of such vacant District.

44. The House of Commons on its first assembling after a General Election shall proceed with all practicable Speed, to elect one of its Members to be Speaker. As to Election of Speaker of House of Commons.

45. In Case of a Vacancy happening in the Office of Speaker by Death, Resignation, or otherwise, the House of Commons shall, with all practicable Speed, proceed to elect another of its Members to be Speaker. As to filling up Vacancy in office of Speaker.

46. The Speaker shall preside at all Meetings of the House of Commons. Speaker to preside.

47. Until the Parliament of Canada otherwise provides, in Case of the Absence for any Reason of the Speaker from the Chair of the House of Commons for a Period of Forty-eight consecutive Hours, the House may elect another of its Members to act as Speaker, and the Member so elected shall, during the Continuance of such Absence of the Speaker, have and execute all the Powers, Privileges, and Duties of Speaker. Provision in case of absence of Speaker.

48. The Presence of at least Twenty Members of the House of Commons shall be necessary to constitute a Meeting of the House for the Exercise of its Powers; and for that Purpose the Speaker shall be reckoned as a Member. Quorum of House of Commons.

49. Questions arising in the House of Commons shall be decided by a Majority of Voices other than that of the Speaker, and when the Voices are equal, but not otherwise, the Speaker shall have a Vote. Voting in House of Commons.

50. Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer.<sup>12</sup> Duration of House of Commons.

51. (1) *The number of members of the House of Commons shall be Two hundred and fifty-five and the representation of the provinces therein shall forthwith upon the coming into force of this section and thereafter on the* Decennial Re-adjustment of Representation.

<sup>12</sup>The British North America Act, 1916, extended the life of the 12th Parliament for one year as a wartime measure.

*completion of each decennial census be readjusted by such authority, in such manner, and from such time as the Parliament of Canada from time to time provides, subject and according to the following Rules:*

*1. Subject as hereinafter provided, there shall be assigned to each of the provinces a number of members computed by dividing the total population of the provinces by Two hundred and fifty-four and by dividing the population of each province by the quotient so obtained, disregarding, except as hereinafter in this section provided, the remainder, if any, after the said process of division.*

*2. If the total number of members assigned to all the provinces pursuant to Rule One is less than Two hundred and fifty-four additional members shall be assigned to the provinces (one to a province) having remainders in the computation under Rule One commencing with the province having the largest remainder and continuing with the other provinces in the order of the magnitude of their respective remainders until the total number of members assigned is Two hundred and fifty-four.*

*3. Notwithstanding anything in this section, if upon the completion of a computation under Rules One and Two, the number of members to be assigned to a province is less than the number of senators representing the said province, Rules One and Two shall cease to apply in respect of the said province, and there shall be assigned to the said province a number of members equal to the said number of senators.*

*4. In the event that Rules One and Two cease to apply in respect of a province then, for the purpose of computing the number of members to be assigned to the provinces in respect of which Rules One and Two continue to apply, the total population of the provinces shall be reduced by the number of the population of the province in respect of which Rules One and Two have ceased to apply and the number Two hundred and fifty-four shall be reduced by the number of members assigned to such province pursuant to Rule Three.*

*5. Such readjustment shall not take effect until the Termination of the then existing Parliament.*

*(2) The Yukon Territory as constituted by Chapter forty-one of the Statutes of Canada, 1901, together with*

*any part of Canada not comprised within a province which may from time to time be included therein by the Parliament of Canada for the purposes of representation in Parliament, shall be entitled to one member.*<sup>13</sup>

51A. *Notwithstanding anything in this Act a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such province.*<sup>14</sup> 5. & 6 Geo. V. c.45.

52. The Number of Members of the House of Commons may be from Time to Time increased by the Parliament of Canada, provided the proportionate Representation of the Provinces prescribed by this Act is not thereby disturbed. Increase of number of House of Commons.

#### *Money Votes; Royal Assent.*

53. Bills for appropriating any part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons. Appropriation and Tax Bills.

54. It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any purpose, that has not been first recommended to that House by Message of the Governor-General in the Session in which such Vote, Resolution, Address, or Bill is proposed. Recommendation of money votes.

55. Where a Bill passed by the Houses of Parliament is presented to the Governor-General for the Queen's Assent, he shall declare, according to his discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure. Royal Assent to Bills, &c.

<sup>13</sup>New in 1946. The readjustment that should have followed the census of 1941 had been postponed by the British North America Act, 1943, "until the first session of the Parliament of Canada commencing after the cessation of hostilities between Canada and the German Reich, the Kingdom of Italy and the Empire of Japan." The new provisions were introduced by the British North America Act, 1946.

<sup>14</sup>Added by British North America Act, 1915, Section 2.

Disallow-  
ance by  
Order in  
Council  
of Act  
assented  
to by  
Governor-  
General.

56. Where the Governor-General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity, send an authentic Copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within two years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a Certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor-General, by Speech or Message to each of the Houses of Parliament, or by Proclamation, shall annul the Act from and after the day of such signification.

Signifi-  
cation of  
Queen's  
pleasure  
on Bill  
reserved.

57. A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until within Two Years from the Day on which it was presented to the Governor-General for the Queen's Assent, the Governor-General signifies, by Speech or Message to each of the Houses of Parliament, or by Proclamation, that it has received the Assent of the Queen in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of Canada.

## V. PROVINCIAL CONSTITUTIONS.

### *Executive Power.*

Appoint-  
ment of  
Lieuten-  
ant-Governors.

58. For each Province there shall be an Officer, styled the Lieutenant-Governor, appointed by the Governor-General in Council by Instrument under the Great Seal of Canada.

Tenure of  
office of  
Lieuten-  
ant-Governor.

59. A Lieutenant-Governor shall hold Office during the Pleasure of the Governor-General; but any Lieutenant-Governor appointed after the Commencement of the first Session of the Parliament of Canada shall not be removable within Five Years from his Appointment, except for Cause assigned, which shall be communicated to him in Writing within One Month after the order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter if the Parliament is then sitting, and if not, then, within One Week after the Commencement of the next Session of the Parliament.



60. The Salaries of the Lieutenant-Governors shall be fixed and provided by the Parliament of Canada.

Salaries of  
Lieutenant-  
Governors.

61. Every Lieutenant-Governor shall, before assuming the Duties of his office, make and subscribe before the Governor-General or some Person authorized by him, Oaths of Allegiance and Office similar to those taken by the Governor-General.

Oaths, &c.,  
of Lieu-  
tenant-  
Governor.

62. The Provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the Time being of each Province or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatever Title he is designated.

Applica-  
tion of  
provisions  
referring  
to Lieu-  
tenant-  
Governor.

63. The Executive Council of Ontario and Quebec shall be composed of such Persons as the Lieutenant-Governor from Time to Time thinks fit, and in the first instance of the following Officers, namely, the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, within Quebec, the Speaker of the Legislative Council and the Solicitor-General.

Appoint-  
ment of  
Executive  
Officers  
for On-  
tario and  
Quebec.

64. The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union, until altered under the Authority of this Act.

Executive  
Govern-  
ment of  
Nova  
Scotia  
and New  
Brunswick

65. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils or with any Number of Members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and

Powers to  
be exer-  
cised by  
Lieutenant-  
Governor  
of Ontario  
or Quebec  
with advice  
or alone.

Quebec respectively, with the Advice, or with the Advice and Consent of, or in conjunction with the respective Executive Councils or any Members thereof, or by the Lieutenant-Governor individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be abolished or altered by the respective Legislatures of Ontario and Quebec.

Applica-  
tion of  
provisions  
referring  
to Lieu-  
tenant-  
Governor  
in Council.

Adminis-  
tration in  
absence,  
&c., of  
Lieu-  
tenant-  
Governor.

Seats of  
Provincial  
Govern-  
ments.

66. The Provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the Advice of the Executive Council thereof.

67. The Governor-General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant-Governor during his Absence, Illness, or other Inability.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

### *Legislative Power.*

#### 1. *ONTARIO.*

Legisla-  
ture for  
Ontario.

69. There shall be a Legislature for Ontario consisting of the Lieutenant-Governor and of one House, styled the Legislative Assembly of Ontario.

Electoral  
Districts.

70. The Legislative Assembly of Ontario shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act.

#### 2. *QUEBEC.*

Legisla-  
ture for  
Quebec.

71. There shall be a Legislature for Quebec consisting of the Lieutenant-Governor and of Two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

72. The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the Lieutenant-Governor in the Queen's Name by Instrument under the Great Seal of Quebec, one being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding Office for the Term of his life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act.

Constitution of  
Legislative  
Council.

73. The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

Qualifica-  
tions of  
Legislative  
Councillors.

74. The Place of a Legislative Councillor of Quebec shall become vacant in the Cases, *mutatis mutandis*, in which the Place of Senator becomes vacant.

Resigna-  
tion, Dis-  
qualifica-  
tion, &c.

75. When a Vacancy happens in the Legislative Council of Quebec by Resignation, Death or otherwise, the Lieutenant-Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified Person to fill the Vacancy.

Vacancies.

76. If any Question arises respecting the Qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

Questions  
as to Va-  
cancies, &c.

77. The Lieutenant-Governor may, from Time to Time, by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his Stead.

Speaker of  
Legislative  
Council.

78. Until the Legislature of Quebec otherwise provides, the Presence of at least Ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers.

Quorum of  
Legislative  
Council.

79. Questions arising in the Legislative Council of Quebec shall be decided by a Majority of Voices, and the Speaker shall in all cases have a Vote, and when the Voices are equal, the Decision shall be deemed to be in the negative.

Voting in  
Legislative  
Council.

Constitution of Legislative Assembly of Quebec.

80. The Legislative Assembly of Quebec shall be composed of sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to Alteration thereof by the Legislature of Quebec: Provided that it shall not be Lawful to present to the Lieutenant-Governor of Quebec for Assent any Bill for altering the Limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule of this Act, unless the Second and Third Readings of such Bill have been passed in the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant-Governor stating that it has been so passed.

### 3. *ONTARIO AND QUEBEC.*

First Session of Legislatures.

81. The Legislatures of Ontario and Quebec respectively shall be called together not later than Six Months after the Union.

Summoning of Legislative Assembly.

82. The Lieutenant-Governor of Ontario and of Quebec shall, from Time to Time, in the Queen's name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

Restriction on election of holders of offices.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a Person accepting or holding in Ontario or in Quebec any Office, Commission or Employment, permanent or temporary, at the Nomination of the Lieutenant-Governor, to which an annual Salary, or any Fee, Allowance, Emolument, or Profit of any Kind or Amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any Person being a Member of the Executive Council of the respective Provinces, or holding any of the following Offices, that is to say:—the Offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor-General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such Office.

84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following Matters, or any of them, namely,—the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections may be continued, and the trial of Controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members, and the issuing and execution of new Writs in case of Seats vacated otherwise than by Dissolution, shall respectively apply to Elections of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Continu-  
ance of  
existing  
election  
Laws.

Provided that until the Legislature of Ontario otherwise provides, at any Election for a member of the Legislative Assembly of Ontario for the District of Algoma, in addition to persons qualified by the Law of the Province of Canada to vote, every male British Subject aged Twenty-one Years or upwards, being a Householder, shall have a Vote.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject, nevertheless, to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant-Governor of the Province), and no longer.

Duration  
of  
Legislative  
Assemblies.

86. There shall be a Session of the Legislature of Ontario and of that of Quebec, once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session.

Yearly  
Session of  
Legislature.

87. The following Provisions of this Act respecting the House of Commons of Canada, shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the Absence of the Speaker, the Quorum, and the Mode of Voting, as if those Provisions were here re-enacted and made applicable in terms to each such Legislative Assembly.

Speaker,  
quorum,  
&c.

4. *NOVA SCOTIA AND NEW BRUNSWICK.*

Constitu-  
tions of  
Legisla-  
tures of  
Nova Scotia  
and New  
Brunswick.

88. The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the Period for which it was elected.

5. *ONTARIO, QUEBEC, AND NOVA SCOTIA.*

First  
Elections.

89. Each of the Lieutenant-Governors of Ontario, Quebec, and Nova Scotia, shall cause Writs to be issued for the first Election of Members of the Legislative Assembly thereof in such form and by such person as he thinks fit, and at such time and addressed to such Returning Officer as the Governor-General directs, and so that the first Election of Member of Assembly for any Electoral District or any subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of Canada for that Electoral District.

Applica-  
tion to  
Legisla-  
tures of  
provisions  
respecting  
money  
votes, &c.

6. *THE FOUR PROVINCES.*

90. The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent of Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant-Governor of the Province for the Governor-General, of the Governor-General for the Queen and for a Secretary of State, of one year for two years, and of the Province for Canada.

## VI. DISTRIBUTION OF LEGISLATIVE POWERS.

*Powers of the Parliament.*

Legislative  
Authority  
of Parlia-  
ment of  
Canada.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and Good Government of Canada, in relation to all Matters not coming within the

Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say:—

1. (*See Appendix B, p. 331 below.*)
- 1A. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
- 2A. *Unemployment Insurance.*<sup>15</sup>
3. The Raising of Money by any Mode or System of Taxation.
4. The Borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses and Sable Island.<sup>16</sup>
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country, or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians and Lands reserved for the Indians.

<sup>15</sup>This was inserted by the British North America Act, 1940.

<sup>16</sup>Also Cape Race Lighthouse in Newfoundland by the Cape Race Lighthouse Act, 1886.

25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of the Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a Local or Private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

*Exclusive Powers of Provincial Legislatures.*

Subjects  
of exclu-  
sive Pro-  
vincial  
Legislation.

92. In each Province the Legislature may exclusively make Laws in relation to Matters within the Classes of Subjects next hereinafter enumerated, that is to say:—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial purposes.
3. The Borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices, and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province, and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Provinces, other than Marine Hospitals.



8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licenses, in order to the Raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes.
  - a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province.
  - b. Lines of Steam Ships between the Province and any British or Foreign Country.
  - c. Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

#### *Education.*

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provision. Legislation  
respecting  
Education.

1. Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union.

2. All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec.
- \*3. Where in any Province a system of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor-General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education.
- \*4. In Case any such Provincial law as from Time to Time seems to the Governor-General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor-General in Council on any Appeal under this Section is not duly executed by the proper Provincial authority in that behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor-General in Council under this Section.

*Uniformity of Laws in Ontario, Nova Scotia, and  
New Brunswick.*

Legislation  
for uni-  
formity of  
Laws in  
Three  
Provinces.

94. Notwithstanding anything in this Act, the Parliament of Canada may make provision for the Uniformity of all or any of the Laws relative to Property or Civil Rights in Ontario, Nova Scotia and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the Passing of any Act in that behalf, the Power of the Parliament of Canada to

\*Although the entire Section 93 is altered for Newfoundland under the terms of union in the British North America Act, 1949, the chief difference is to substitute for these portions a provision that "all such schools shall receive their share of such [public] funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature."

make Laws in relation to any Matter comprised in any such Act, shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity, shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

*Agriculture and Immigration.*

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province, relative to Agriculture or to Immigration, shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

Concurrent powers of legislation respecting agriculture, &c.

VII.—JUDICATURE.

96. The Governor-General shall appoint the Judges of the Superior, District and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Appointment of Judges.

97. Until the Laws relative to Property and Civil Rights in Ontario, Nova Scotia and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor-General shall be selected from the respective Bars of those Provinces.

Selection of Judges in Ontario, &c.

98. The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

Selection of Judges in Quebec.

99. The Judges of the Superior Courts shall hold office during good Behaviour, but shall be removable by the Governor-General on Address of the Senate and House of Commons.

Tenure of office of Judges of Superior Courts.

100. The Salaries, Allowances and Pensions of the Judges of the Superior, District and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick) and of the Admiralty Courts in cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada.

Salaries &c., of Judges.

General  
Court of  
Appeal, &c.

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time, provide for the Constitution, Maintenance and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

#### VIII.—REVENUES; DEBTS; ASSETS; TAXATION.

Creation of  
Consoli-  
dated  
Revenue  
Fund.

102. All Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick before and at the Union, had and have power of Appropriation, except such Portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form One Consolidated Revenue Fund, to be appropriated for the Public Service of Canada in the manner and subject to the charges in this Act provided.

Expenses  
of collec-  
tion, &c.

103. The Consolidated Revenue Fund of Canada shall be permanently charged with the Costs, Charges and Expenses incident to the Collection, Management, and Receipt thereof, and the same shall form the First Charge thereon, subject to be reviewed and audited in such Manner as shall be ordered by the Governor-General in Council until the Parliament otherwise provides.

Interest of  
Provincial  
Public  
Debts.

104. The annual Interest of the Public Debts of the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union shall form the Second Charge on the Consolidated Revenue Fund of Canada.

Salary of  
Governor-  
General.

105. Unless altered by the Parliament of Canada, the Salary of the Governor-General shall be Ten Thousand Pounds sterling Money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the Third Charge thereon.

Appropri-  
ation from  
time to  
time.

106. Subject to the several Payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the Public Service.

107. All Stocks, Bankers' Balances, and Securities for money belonging to each Province at the Time of the Union, except as in this Act mentioned, shall be Property of Canada, and shall be taken in Reduction of the Amount of the respective Debts of the Provinces at the Union. Transfer of stocks, &c.

108. The Public Works and Property of each Province, enumerated in the Third Schedule to this Act, shall be the Property of Canada. Transfer of property in schedule.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any Interest other than that of the Province in the same.<sup>17</sup> Property in Lands, Mines, &c.

110. All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province. Assets connected with Provincial debts.

111. Canada shall be liable for the Debts and Liabilities of each Province existing at the Union. Canada to be liable for Provincial debts.

112. Ontario and Quebec conjointly shall be liable to Canada for the Amount (if any) by which the Debt of the Province of Canada exceeds at the Union Sixty-two million five hundred thousand Dollars, and shall be charged with Interest at the Rate of Five per centum per Annum thereon. Debts of Ontario and Quebec.

113. The Assets enumerated in the Fourth Schedule to this Act, belonging at the Union to the Province of Canada, shall be the Property of Ontario and Quebec conjointly. Assets of Ontario and Quebec.

114. Nova Scotia shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Eight million Dollars, and shall be charged with Interest at the rate of Five per centum per annum thereon. Debt of Nova Scotia.

<sup>17</sup>By the terms of admission in 1871 some Crown lands in British Columbia were transferred to the Dominion and by Canadian Acts erecting Manitoba (1870), Saskatchewan and Alberta (1905) all the ungranted lands were retained by the Dominion. The British North America Act, 1930, transferred the remaining ungranted lands, etc. to the respective provinces "in order that these Provinces may be in the same position as the original Provinces of Confederation."

Debt of  
New  
Brunswick.

115. New Brunswick shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Seven million Dollars, and shall be charged with Interest at the rate of Five per centum per annum thereon.

Payment  
of interest  
to Nova  
Scotia and  
New  
Brunswick.

116. In case the Public Debts of Nova Scotia and New Brunswick do not at the Union amount to Eight million and Seven million Dollars respectively, they shall respectively receive, by half-yearly Payments in advance from the Government of Canada, Interest at Five per centum per annum on the difference between the actual Amounts of their respective Debts and such stipulated Amounts.

Provincial  
public  
property.

117. The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of Canada to assume any Lands or Public Property required for Fortifications or for the Defence of the country.

7 Ed. vii.  
c. 11. Pay-  
ments to  
be made  
by Canada  
to Prov-  
inces.

118. (1) *The following grants shall be made yearly by Canada to every province, which at the commencement of this Act is a province of the Dominion, for its local purposes and the support of its Government and Legislature:*

(a) *A fixed grant—*

*where the population of the province is under one hundred and fifty thousand, of one hundred thousand dollars;*

*where the population of the province is one hundred and fifty thousand, but does not exceed two hundred thousand, of one hundred and fifty thousand dollars;*

*where the population of the province is two hundred thousand, but does not exceed four hundred thousand, of one hundred and eighty thousand dollars;*

*where the population of the province is four hundred thousand, but does not exceed eight hundred thousand, of one hundred and ninety thousand dollars;*

*where the population of the province is eight hundred thousand, but does not exceed one million five hundred thousand, of two hundred and twenty-thousand dollars;*

*where the population of the province exceeds one million five hundred thousand, of two hundred and forty thousand dollars; and*

(b) *Subject to the special provisions of this Act as to the provinces of British Columbia and Prince Edward Island, a grant at the rate of eighty cents per head of the population of the province up to the number of two million five hundred thousand, and at the rate of sixty cents per head of so much of the population as exceeds that number.*

(2) *An additional grant of one hundred thousand dollars shall be made yearly to the Province of British Columbia for a period of ten years from the commencement of this Act.*

(3) *The population of the province shall be ascertained from time to time in the case of the provinces of Manitoba, Saskatchewan, and Alberta respectively by the last quinquennial census or statutory estimate of population made under the Acts establishing those provinces or any other Act of the Parliament of Canada making provision for the purpose, and in the case of any other province by the last decennial census for the time being.*

(4) *The grants payable under this Act shall be paid half-yearly in advance to each province.*

(5) *The grants payable under this Act shall be substituted for the grants or subsidies (in this Act referred to as existing grants) payable for the like purposes at the commencement of this Act to the several provinces of the Dominion, under the provisions of section one hundred and eighteen of the British North America Act, 1867, or of any Order in Council establishing a province, or of any Act of the Parliament of Canada containing directions for the payment of any such grant or subsidy, and those provisions shall cease to have effect.*

(6) *The Government of Canada shall have the same power of deducting sums charged against a province on account of the interest on public debt in the case of the grant payable under this Act to the province as they have in the case of the existing grant.*

(7) *Nothing in this Act shall affect the obligation of the Government of Canada to pay to any province any grant which is payable to that province, other than the existing grant for which the grant under this Act is substituted.*

(8) *In the case of the provinces of British Columbia and Prince Edward Island, the amount paid on account of the grant payable per head of the population to the provinces under this Act shall not at any time be less than the amount of the corresponding grant payable at the commencement of this Act; and if it is found on any decennial census that the population of the province has decreased since the last decennial census, the amount paid on account of the grant shall not be decreased below the amount then payable, notwithstanding the decrease of the population.*<sup>18</sup>

Further  
Grant to  
New  
Brunswick.

119. New Brunswick shall receive by half-yearly Payments in advance from Canada for the Period of Ten years, from the Union an additional Allowance of Sixty-three thousand Dollars per Annum; but as long as the Public Debt of that Province remains under Seven million Dollars, a Deduction equal to the Interest at Five per Centum per Annum on such Deficiency shall be made from that Allowance of Sixty-three thousand Dollars.

Form of  
payments.

120. All Payments to be made under this Act, or in Discharge of Liabilities created under any Act of the Provinces of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such Form and Manner as may from Time to Time be ordered by the Governor-General in Council.

Canadian  
manufac-  
tures, &c.

121. All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

Continu-  
ance of  
Customs  
and Excise  
Laws.

122. The Customs and Excise Laws of each Province shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of Canada.

<sup>18</sup>These new provisions of the British North America Act, 1907, as will be seen by (5), supersede the original terms of Section 118, which simply provided Ontario, Quebec, Nova Scotia, and New Brunswick with annual sums of \$80,000, \$70,000, \$60,000 and \$50,000 respectively and a per capita grant of 80c up to 400,000 persons. The original Section further declared that "such grants shall be in full settlement of all future demands on Canada."



123. Where Customs Duties are, at the Union, leviable on any Goods, Wares, or Merchandizes in any two Provinces, those Goods, Wares, and Merchandizes may, from and after the Union, be imported from one of those Provinces into the other of them on Proof of payment of the Customs Duty leviable thereon in the Province of exportation, and on Payment of such further Amount (if any) of Customs Duty as is leviable thereon in the Province of Importation.

Exportation and importation as between two Provinces.

124. Nothing in this Act shall affect the Right of New Brunswick to levy the Lumber Dues provided in Chapter Fifteen of Title Three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the Union, and not increasing the Amount of such dues; but the Lumber of any of the Provinces other than New Brunswick shall not be subject to such Dues.

Lumber Dues in New Brunswick.

125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

Exemption of Public Lands, &c.

126. Such Portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick had before the Union, Power of Appropriation, as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the Special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

Provincial consolidated revenue fund.

#### IX.—MISCELLANEOUS PROVISIONS.

##### *General.*

127. If any Person, being at the passing of this Act, a Member of the Legislative Council of Canada, Nova Scotia or New Brunswick, to whom a Place in the Senate is offered, does not within Thirty Days thereafter, by Writing under his Hand, addressed to the Governor-General of the Province of Canada or to the Lieutenant-Governor of Nova Scotia or New Brunswick (as the case may be), accept the same, he shall be deemed to have declined the same; and any Person who, being at the passing of this Act a Member of the Legislative Council of Nova Scotia or New Brunswick, accepts a Place in the Senate, shall thereby vacate his seat in such Legislative Council.

As to Legislative Councillors of Provinces becoming Senators.

Oath of  
allegiance,  
&c.

128. Every Member of the Senate or House of Commons of Canada shall, before taking his Seat therein, take and subscribe before the Governor-General or some Person Authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall, before taking his Seat therein, take and subscribe before the Lieutenant-Governor of the Province, or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor-General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

Continu-  
ance of  
existing  
Laws,  
Courts,  
Officers,  
&c.

129. Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland,<sup>19</sup>) to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Provinces, according to the Authority of the Parliament or of that Legislature under this Act.

Transfer  
of Officers  
to Canada.

130. Until the Parliament of Canada otherwise provides, all Officers of the several Provinces having Duties to discharge in relation to Matters other than those coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces shall be Officers of Canada, and shall continue to discharge the Duties of their respective Offices under the same Liabilities, Responsibilities, and Penalties as if the Union had not been made.

Appoint-  
ment of  
new  
Officers.

131. Until the Parliament of Canada otherwise provides, the Governor-General in Council may from Time to Time appoint such Officers as the Governor-General in Council deems necessary or proper for the effectual Execution of this Act.

<sup>19</sup>This exception has been repealed by the Statute of Westminster, 1931, for all British statutes other than the British North America Acts, 1867-1930.

132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

Treaty  
obliga-  
tions.

133. Either the English or French language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

Use of  
English  
and  
French  
languages.

*Ontario and Quebec.*

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint, under the Great Seal of the Province, the following Officers, to hold Office during Pleasure, that is to say,—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the case of Quebec the Solicitor-General; and may, by order of the Lieutenant-Governor in Council, from Time to Time prescribe the Duties of those Officers and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof; and may also appoint other and additional Officers to hold Office during Pleasure, and may from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof.

Appoint-  
ment of  
Executive  
Officers of  
Ontario  
and  
Quebec.

135. Until the Legislature of Ontario or Quebec otherwise provides, all Rights, Powers, Duties, Functions, Responsibilities, or Authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver-General, by any Law, Statute, or Ordinance

Powers,  
duties, &c.,  
of Execu-  
tive  
Officers.

of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any Officer to be appointed by the Lieutenant-Governor for the Discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the Duties and Functions of the Office of Minister of Agriculture at the passing of this Act imposed by the Law of the Province of Canada, as well as those of the Commissioner of Public Works.

Great  
Seals.

136. Until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same Design as those used in the Provinces of Upper Canada and Lower Canada respectively before their Union as the Province of Canada.

Construc-  
tion of  
temporary  
Acts.

137. The words "and from thence to the End of the then next ensuing Session of the Legislature," or words to the same effect used in any temporary Act of the Province of Canada not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of Canada, if the subject-matter of the Act is within the powers of the same as defined by this Act, or to the next Sessions of the Legislatures of Ontario and Quebec respectively, if the subject-matter of the Act is within the powers of the same as defined by this Act.

As to  
errors in  
names.

138. From and after the Union, the use of the words "Upper Canada" instead of "Ontario," or "Lower Canada" instead of "Quebec," in any Deed, Writ, Process, Pleading, Document, Matter or Thing, shall not invalidate the same.

As to issue  
of Procla-  
mations  
before  
Union, to  
commence  
after  
Union.

139. Any Proclamation under the Great Seal of the Province of Canada, issued before the Union, to take effect at a time which is subsequent to the Union, whether relating to that Province or to Upper Canada, or to Lower Canada, and the several matters and things therein proclaimed, shall be and continue of like force and effect as if the Union had not been made.

As to  
issue of  
Procla-  
mations  
after  
Union.

140. Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada, to be issued under the Great Seal of the Province of Canada, whether relating to that Province or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant-Governor of Ontario or of

Quebec, as its subject-matter requires, under the Great Seal thereof; and from and after the issue of such Proclamation, the same and the several matters and things therein proclaimed, shall be and continue of the like force and effect in Ontario or Quebec as if the Union had not been made.

141. The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec. **Penitentiary.**

142. The Division and Adjustment of the Debts, Credits, Liabilities, Properties and Assets of Upper Canada and Lower Canada shall be referred to the Arbitrament of Three Arbitrators, One chosen by the Government of Ontario, One by the Government of Quebec, and One by the Government of Canada; and the Selection of the Arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the Arbitrator chosen by the Government of Canada shall not be a Resident either in Ontario or in Quebec. **Arbitration respecting debts, &c.**

143. The Governor-General in Council may from Time to Time order that such and so many of the Records, Books, and Documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the Property of that Province; and any Copy thereof or extract therefrom, duly certified by the Officer having charge of the Original thereof, shall be admitted as Evidence. **Division of Records.**

144. The Lieutenant-Governor of Quebec may from Time to Time, by Proclamation under the Great Seal of the Province, to take effect from a Day to be appointed therein, constitute Townships in those Parts of the Province of Quebec in which Townships are not then already constituted, and fix the Metes and Bounds thereof. **Constitution of townships in Quebec.**

#### X. INTERCOLONIAL RAILWAY.

145. Inasmuch as the Provinces of Canada, Nova Scotia, and New Brunswick have joined in a Declaration that the construction of the Intercolonial Railway is essential to the Consolidation of the Union of British North America, and to the Assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that Pro- **Duty of Government and Parliament of Canada to make railway herein described.**

vision should be made for its immediate Construction by the Government of Canada: Therefore, in order to give effect to that Agreement, it shall be the Duty of the Government and Parliament of Canada to provide for the Commencement, within Six Months after the Union, of a Railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the Construction thereof without Intermission, and the Completion thereof with all practicable speed.

# XI. ADMISSION OF OTHER COLONIES.

Power to  
admit  
New-  
foundland,  
&c., into  
the Union.

146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order-in-Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland<sup>20</sup>.

<sup>20</sup>Rupert's Land and the North-Western Territory were united with Canada by order-in-council of 1870, after the Rupert's Land Act, 1868 and Rupert's Land (Loan) Act, 1868, had provided for the purchase of the Hudson's Bay Company's rights. The Dominion Parliament was given authority to legislate for those territories, subject to the special terms of admission.

The Colony of British Columbia was united with Canada by order-in-council of 1871. Except for the special terms, the British North America Act of 1867 was to apply "as if the Colony of British Columbia had been one of the Provinces originally united by the said Act."

The Colony of Prince Edward Island was admitted in 1873 in a similar fashion and with identical status as British Columbia.

Newfoundland, however, was admitted in 1949 by a British North America Act, 1949, under which several sections of the Act of 1867 were modified for that province.

2. *The Dominion of Canada may from Time to Time establish new Provinces in any Territories forming for the Time being Part of the Dominion of Canada, But not included in any Province thereof, and may, at the Time of such Establishment, make Provision for the Constitution and Administration of any such Province, and for the Passing of Laws for the Peace, Order and Good Government of such Province, and for its Representation in the said Parliament.*

34 & 35  
Vic. c. 28.  
Parliament  
of Canada  
may estab-  
lish new  
Provinces  
and pro-  
vide for  
the con-  
stitution,  
&c. thereof.

3. *The Parliament of Canada may from Time to Time, with the Consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the Limits of such Province, upon such Terms and Conditions as may be agreed to by the said Legislature, and may with the like Consent, make Provision respecting the Effect and Operation of any such Increase or Diminution or Alteration of Territory in relation to any Province affected thereby.*

Alteration  
of limits  
of Pro-  
vinces.

4. *The Parliament of Canada may from Time to Time make Provision for the Administration, Peace, Order, and good Government of any Territory not for the Time being included in any Province.*

Parliament  
of Canada  
may legis-  
late for any  
territory  
not includ-  
ed in a  
Province.

5. *The following Acts passed by the said Parliament of Canada, and intituled respectively: "An Act for the temporary Government of Rupert's Land and the North Western Territory when united with Canada," and "An Act to amend and continue the Act Thirty-two and Thirty-three Victoria, Chapter Three, and to establish and provide for the Government of the Province of Manitoba," shall be and be deemed to have been valid and effectual for All Purposes whatsoever from the Date at which they respectively received the Assent, in the Queen's Name, of the Governor-General of the said Dominion of Canada.*

Confirma-  
tion of  
Acts of  
Parlia-  
ment of  
Canada, 32  
& 33 Vic.  
(Can.) c.3  
and 33 Vic.  
(Can.) c.3.

6. *Except as provided by the Third Section of this Act, it shall not be competent for the Parliament of Canada to alter the Provisions of the last mentioned Act of the said Parliament, in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the Right of the Legislature of the Province of Manitoba to alter from Time to Time the Provisions of any Law respecting the Qualification of Electors and Members of the Legislative Assembly, and to make Laws respecting Elections in the said Province.*<sup>21</sup>

Limitation  
of powers  
of Parlia-  
ment of  
Canada to  
legislate  
for an  
established  
Province.

<sup>21</sup>The italicised sections are from the British North America Act, 1871.

As to Representation of Newfoundland and Prince Edward Island in Senate.

147. In case of the Admission of Newfoundland and Prince Edward Island or either of them, each shall be entitled to a Representation, in the Senate of Canada, of Four Members, and (notwithstanding anything in this Act) in case of the Admission of Newfoundland, the Normal Number of Senators shall be Seventy-six and their Maximum Number shall be Eighty-two; but Prince Edward Island, when admitted, shall be deemed to be comprised in the third of the *four* Divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of Prince Edward Island, whether Newfoundland is admitted or not, the Representation of Nova Scotia and New Brunswick in the Senate shall, as Vacancies occur, be reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act, for the Appointment of *four* or *eight* additional Senators under the Direction of the Queen<sup>22</sup>.

49 & 50  
Vic. c. 35.  
Provision  
by Parliament  
of Canada for  
representation  
of  
Territories.

1. *The Parliament of Canada may, from Time to Time, make Provisions for the Representation in the Senate and House of Commons of Canada, or in either of them, of any Territories which for the Time being form Part of the Dominion of Canada, but are not included in any Province thereof.*

Effect of  
Acts of  
Parliament  
of Canada.

2. *Any Act passed by the Parliament of Canada before the passing of this Act for the Purpose mentioned in this Act shall, if not disallowed by the Queen, be, and shall be deemed to have been, valid and effectual from the date at which it received the Assent, in Her Majesty's name, of the Governor-General of Canada.*

34 & 35  
Vic. c. 28.  
30 & 31  
Vic. c. 3.

*It is hereby declared that any Act passed by the Parliament of Canada, whether before or after the passing of this Act, for the Purpose mentioned in this Act or in the British North America Act, 1871, has Effect, notwithstanding anything in the British North America Act, 1867, and the Number of Senators or the Number of Members of the House of Commons specified in the last mentioned Act is increased by the Number of Senators or of Members, as the Case may be, provided by any such Act of the Parliament of Canada for the Representation of any Provinces or Territories of Canada.*<sup>23</sup>

<sup>22</sup>The changes from "three" and "six" to the italicised numbers are required by the British North America Act, 1915.

The provision for four senators from Newfoundland was changed to six at union in 1949 by the British North America Act, 1949.

<sup>23</sup>These provisions were contained in the British North America Act, 1886.



## SCHEDULES.

### THE FIRST SCHEDULE.

#### *Electoral Districts of Ontario.*

[Omitted as they have been changed by successive  
Representation Acts.]

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### THE SECOND SCHEDULE.

#### *Electoral Districts of Quebec specially fixed.*

[Omitted.]

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### THE THIRD SCHEDULE.

#### *Provincial Public Works and Property to be the Property of Canada.*

1. Canals, with Lands and Water Power connected therewith.
  2. Public Harbours.
  3. Lighthouses and Piers, and Sable Island.
  4. Steamboats, Dredges, and Public Vessels.
  5. Rivers and Lake Improvements.
  6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
  7. Military Roads.
  8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the Use of the Provincial Legislatures and Governments.
  9. Property transferred by the Imperial Government, and known as Ordnance Property.
  10. Armouries, Drill Sheds, Military Clothing, and Munitions of War, and Lands set apart for general Public Purposes.
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### THE FOURTH SCHEDULE.

#### *Assets to be the Property of Ontario and Quebec conjointly.*

[Omitted.]

## THE FIFTH SCHEDULE.

*Oath of Allegiance.*

I, A.B., do swear, that I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time, with proper terms of reference thereto.*

## DECLARATION OF QUALIFICATION.

I, A. B., do declare and testify, That I am by Law duly qualified to be appointed a Member of the Senate of Canada [*or as the case may be*], and that I am legally or equitably seized as of Freehold for my own Use and Benefit of Lands or Tenements held in Free and Common Socage [*or seized or possessed for my own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture (as the case may be),*] in the Province of Nova Scotia [*or as the case may be*], of the Value of Four Thousand Dollars over and above all Rents, Dues, Debts, Mortgages, Charges, and Incumbrances, due and payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a Title to or become possessed of the said Land and Tenements or any Part thereof for the Purpose of enabling me to become a Member of the Senate of Canada [*or as the case may be*] and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities.

## B. ADDRESS FOR "AMENDMENT" AMENDMENT, 1949

On five occasions in the past ten years formal action by the British Parliament for the purpose amending the British North America Act has been invoked by Address to the Crown from the Canadian Parliament. The most recent one is directed extending the authority of the Canadian Parliament to alter certain aspects of the British North America Act of 1867. The resulting statute is therefore both an amendment to the Act of 1867 and a modification of the Statute of Westminster, 1931, in the succeeding Appendix C.

An Address was introduced in the House of Commons by Mr. St. Laurent, Prime Minister, on October 17, 1949 but after several days debate in which the Opposition divided the House over amendments requiring consultation with the provinces or additional limitations on the new authority, an Amended Address was carried, transmitted to Senate where it was carried on November, 9, 1949, and finally enacted at Westminster to receive Royal Assent on December 16, 1949.

To the King's Most Excellent Majesty:

Most Gracious Sovereign:—

We, Your Majesty's most dutiful and loyal subjects, the Senate and Commons of Canada in Parliament assembled, humbly approach Your Majesty, praying that You may graciously be pleased to cause a measure to be laid before the Parliament of the United Kingdom to be expressed as follows:

An Act to Amend the British North America Act, 1867, relating to the amendment of the Constitution of Canada.

Whereas the Senate and Commons of Canada in Parliament assembled have submitted an Address to His Majesty praying that His Majesty may graciously be pleased to cause a measure to be laid before the Parliament of the United Kingdom for the enactment of the provisions hereinafter set forth:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Section 91 of the British North America Act, 1867, is amended by renumbering Class 1 thereof as Class 1A and by inserting therein immediately before that Class the following as Class I:

"I. The amendment from time to time of the Constitution of Canada except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a Province, or to any class of persons with respect to schools or as regards the use of the English or the French language, or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House; provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada, if such continuation is not opposed by the votes of more than one-third of the members of such House."

2. This Act may be cited as the British North America Act, 1949 (No. 2), and the British North America Acts, 1867-1949, and this Act may be cited together as the British North America Acts, 1867-1949.

### C. THE STATUTE OF WESTMINSTER, 1931

This enactment of the British Parliament removed all limitations on Canadian governmental powers—with the one exception of amendment of the British North America Acts, 1867 to 1930.

The Canadian request referred to in the preamble's fifth paragraph took the form of an Address to His Majesty passed by the Canadian House of Commons on 30 June, 1931 and by the Senate on 8 July, 1931. The Address specifically sought the enactment of a statute containing paragraphs two and three of the preamble and sections 2, 3, 4, 5, 6, 7 and 11 of the Act.

## THE STATUTE OF WESTMINSTER, 1931.

22 Geo. V, c. 4.

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930.

11 December, 1931

WHEREAS the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion.

And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

Now, therefore, be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. In this Act the expression "Dominion" means <sup>Meaning of "Dominion" in this Act.</sup> any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

2. (1) The Colonial Laws Validity Act, 1865, shall <sup>Validity of laws made by Parliament of a Dominion.</sup> not apply to any law made after the commencement of this Act by the Parliament of a Dominion. <sub>28 & 29 Vict. c. 63.</sub>

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule, or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

3. It is hereby declared and enacted that the Par- <sup>Power of Parliament of Dominion to legislate extra-territorially.</sup> liament of a Dominion has full power to make laws having extra-territorial operation.

4. No Act of Parliament of the United Kingdom <sup>Parliament of United Kingdom not to legislate for Dominion except by consent.</sup> passed after the commencement of this Act shall extend or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

Powers of  
Dominion  
Parliaments  
in relation  
to merchant  
shipping.  
57 & 58 Vict.  
c. 60.

5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

Powers of  
Dominion  
Parliaments  
in relation to  
Courts of  
Admiralty.  
53 & 54 Vict.  
c. 27.

6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

Saving for  
British North  
America Acts  
and applica-  
tion of the  
Act to  
Canada.

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

(2) The provision of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

8. }  
9. } *Omitted as referring exclusively to Australia,*  
10. } *New Zealand, and Newfoundland.*

Meaning of  
"Colony"  
in future  
Acts.  
52 & 53 Vict.  
c. 63.

11. Notwithstanding anything in the Interpretation Act, 1889, the expression "Colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

Short title.

12. This Act may be cited as the Statute of Westminster, 1931.



#### D. SUCCESSION TO THE THRONE ACT, 1937

Canadian "request and consent" for British legislation at the abdication crisis was made by order-in-council of 10 December, 1937, the Dominion Parliament being then out of session. Whether Canadian legislation was necessary or not (under Section 2 of the British North America Act, 1867), this Act was passed to provide the parliamentary sanction implied by the Statute of Westminster, 1931.

A second example of concurrent legislation concerning the common monarchy was provided at the establishment of the new Dominions—India and Pakistan. In July, 1947, *The Royal Style and Titles Act* declared "the assent of the Parliament of Canada . . . to the omission from the Royal Style and Titles of the words 'India Imperator' and the words 'Emperor of India'."

## SUCCESSION TO THE THRONE ACT, 1937.

1 Geo. VI, c. 16. (Can.)

An Act respecting alteration in the law touching the Succession to the Throne.

[Assented to 31st March, 1937]

### Preamble.

WHEREAS his former Majesty, King Edward VIII, by His Royal Message of the tenth day of December, in the year of Our Lord one thousand nine hundred and thirty-six, was pleased to declare that He was irrevocably determined to renounce the Throne for Himself and His descendants, and that He had for that purpose executed the Instrument of Abdication, which is set out in Schedule One to this Act, and signified his desire that effect thereto should be given immediately:

And whereas, following upon communication to His Majesty's Government in Canada of his former Majesty's said declaration and desire, the request and consent of Canada, pursuant to the provisions of section four of the Statute of Westminster, 1931, to the enactment of His Majesty's Declaration of Abdication Act, 1936, which is set out in Schedule Two to this Act, was communicated to His Majesty's Government in the United Kingdom:

And whereas the following recital is set forth in the preamble to the Statute of Westminster, 1931:

Statute of  
Westminster,  
U.K.,  
22 Geo. V,  
ch. 4.

"And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all

the Dominions as of the Parliament of the United Kingdom”;

and accordingly it becomes necessary to declare the Assent of the Parliament of Canada to the alteration in the law touching the Succession to the Throne set forth in His Majesty's Declaration of Abdication Act, 1936.

Now, therefore, His Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The alteration in the law touching the Succession to the Throne set forth in the Act of the Parliament of the United Kingdom intituled “His Majesty's Declaration of Abdication Act, 1936” is hereby assented to.

Assent to  
alteration in  
the law  
touching the  
Succession  
to the  
Throne.

## SCHEDULE ONE.

### INSTRUMENT OF ABDICATION.

I, Edward the Eighth, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Emperor of India, do hereby declare My irrevocable determination to renounce the Throne for Myself and for My descendants, and My desire that effect should be given to this Instrument of Abdication immediately.

In token whereof I have hereunto set My hand this tenth day of December, nineteen hundred and thirty-six, in the presence of the witnesses whose signatures are subscribed.

EDWARD R.I.

Signed at Fort Belvedere  
in the presence of

ALBERT.

HENRY.

GEORGE.

## SCHEDULE TWO.

AN ACT OF THE PARLIAMENT OF THE UNITED KINGDOM INTITULED:

An Act to give effect to His Majesty's declaration of abdication; and for the purposes connected therewith.

WHEREAS His Majesty by His Royal Message of the A.D. 1936.

tenth day of December in this present year has been pleased to declare that He is irrevocably determined to renounce the Throne for Himself and His descendants, and has for that purpose executed the Instrument of Abdication set out in the Schedule to this Act, and has signified His desire that effect thereto should be given immediately;

And whereas, following upon the communication to His Dominions of His Majesty's said declaration and desire, the Dominion of Canada pursuant to the provisions of section four of the Statute of Westminster, 1931, has requested and consented to the enactment of this Act, and the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa have assented thereto:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Effect of  
His Majesty's  
declaration of  
abdication.

1. (1) Immediately upon the Royal Assent being signified to this Act the Instrument of Abdication executed by His present Majesty on the tenth day of December, nineteen hundred and thirty-six, set out in the Schedule to this Act, shall have effect, and thereupon His Majesty shall cease to be King and there shall be a demise of the Crown, and accordingly the member of the Royal Family then next in succession to the Throne shall succeed thereto and to all the rights, privileges, and dignities thereunto belonging.

(2) His Majesty, His issue, if any, and the descendants of that issue, shall not after His Majesty's abdication have any right, title or interest in or to the succession to the Throne, and section one of the Act of Settlement shall be construed accordingly.

(3) The Royal Marriages Act, 1772, shall not apply to His Majesty after His abdication nor to the issue, if any, of His Majesty or the descendants of that issue.

Short title.

2. This Act may be cited as His Majesty's Declaration of Abdication Act, 1936.

*[Then follows the same declaration as in Schedule One above].*

### E. SEALS ACT, 1939

This Act was passed by the Dominion Parliament prior to the royal visit in 1939. Previously His Majesty had used British seals for such Canadian documents as required them. These seals, it need hardly be said, had to be left in Britain. This Act made it possible for His Majesty to specify appropriate seals—such as the Great Seal of Canada—as royal seals for Canadian purposes. It also brought all “royal instruments” under Canadian legislative regulation and removed the necessity for future participation by British ministers in documents sealed abroad by the King.

## THE SEALS ACT, 1939.

3 Geo. VI, c. 22. (Can.)

An Act to make provision for the Sealing of Royal Instruments.

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

- Short title. 1. This Act may be cited as *The Seals Act, 1939*.
- Definitions. 2. In This Act, and in any regulation or order made hereunder, unless the context otherwise requires:—
- “Great Seal of the Realm”. (a) “Great Seal of the Realm” means the Great Seal of the United Kingdom of Great Britain and Northern Ireland for which provision was made in Article XXIV of The Union with Scotland Act, 1706 (6 Anne, A.D. 1706, chapter XI, An Act for an Union of the Two Kingdoms of England and Scotland) and includes the wafer seal;
- “Signet”. (b) “Signet” means the seal which, under the existing practice in the United Kingdom of Great Britain and Northern Ireland, is delivered by His Majesty the King to each of his Principal Secretaries of State in the United Kingdom, and includes the lesser signet, or second secretarial seal and the cachet;
- “Royal Instrument”. (c) “Royal Instrument” means an instrument, in respect of Canada, that, under the present practice, is issued by and in the name of the King and passed under the Great Seal of the Realm or under one of the Signets;
- “Documents under the Sign Manual”. (d) “Document under the Sign Manual” means an instrument, in respect of Canada, that, under the present practice, is issued in the name and under the signature of His Majesty the King, without any seal;
- “Counter-signature”. (e) “Countersignature” refers to the endorsement upon a royal instrument or upon a document under

the Sign Manual of the signature of His Majesty's responsible Canadian Minister;

- (f) "Royal Seals" include the Great Seal of Canada and any other seals or signets that may, with the approval of His Majesty the King, be authorized under the provisions of this Act. "Royal Seals".

3. Notwithstanding the provisions of any law in force in Canada, any royal instrument may be issued by and with the authority of His Majesty the King and passed under the Great Seal of Canada, or under any other Royal Seal approved by His Majesty the King for the purpose. Issue of royal instruments.

4. (1) Notwithstanding the provisions of any law in force in Canada, the Governor in Council may, subject to the approval of His Majesty the King, make orders and regulations relating to royal seals, the use thereof, royal instruments, and documents under the Sign Manual, and, without restricting the generality of the foregoing, in relation to the following matters:— Orders and regulations.

- (a) The specification of the instruments or classes of instruments which are to be passed under the royal seals;
- (b) The authorisation of royal seals and the naming of such seals, and the specification of the purposes for which they are to be used;
- (c) The custody of the royal seals;
- (d) The procedure governing the use of the royal seals;
- (e) Countersignature of royal instruments;
- (f) The issuing and countersignature of documents under the Sign Manual;
- (g) The procedure whereby the approval of His Majesty the King and his authority for the issuing of royal instruments and documents under the Sign Manual is to be given;
- (h) The authentication and proof of royal instruments and documents under the Sign Manual, in-

cluding the conditions under which certification by an official, or publication by the King's Printer, shall constitute authentication and proof.

Publication.

(2) All orders and regulations made under the authority of this section shall be published in the *Canada Gazette*.



F. LETTERS PATENT, 1947, AND COMMISSION,  
1940, FOR THE GOVERNOR-GENERAL

The Letters Patent establish the office of Governor-General and the Commission makes the appointment of the particular person to the office. Originally the same document both constituted the office and made the appointment to it. This was ended in 1878, when the Letters Patent and Commission were separated. Until 1947 there were, also, Instructions, separately issued, containing some general directions for the guidance of the Governor-General; the pertinent provisions have now been incorporated in the new Letters Patent of 1947. It will be observed that both documents reproduced here are countersigned by the Canadian Prime Minister instead of by a British minister as was the case before 1931.

LETTERS PATENT CONSTITUTING THE OFFICE OF  
GOVERNOR GENERAL AND COMMANDER-IN-CHIEF  
OF CANADA

Effective October 1, 1947

GEORGE R.  
[L.S.]

CANADA

GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland  
and the British Dominions beyond the Seas KING, Defender of  
the Faith.

TO ALL TO WHOM these Presents shall come,

GREETING:

*Preamble Recites Letters Patent of 23rd March, 1931*

WHEREAS by certain Letters Patent under the Great Seal bearing date at Westminster the twenty-third day of March, 1931, His late Majesty King George the Fifth did constitute, order, and declare that there should be a Governor General and Commander-in-Chief in and over Canada, and that the person filling the office of Governor General and Commander-in-Chief should be from time to time appointed by Commission under the Royal Sign Manual and Signet:

AND WHEREAS at St. James's on the twenty-third day of March, 1931, His late Majesty King George the Fifth did cause certain Instructions under the Royal Sign Manual and Signet to be given to the Governor General and Commander-in-Chief:

AND WHEREAS it is Our Will and pleasure to revoke the Letters Patent and Instructions and to substitute other provisions in place thereof:

*Revokes Letters Patent of 23rd March, 1931, and Instructions*

NOW THEREFORE We do by these presents revoke and determine the said Letters Patent, and everything therein contained, and all amendments thereto, and the said Instructions, but without prejudice to anything lawfully done thereunder:

AND We do declare Our Will and pleasure as follows:

*Office of Governor General and Commander-in-Chief Constituted*

I. We do hereby constitute, order, and declare that there shall be a Governor General and Commander-in-Chief in and over Canada, and appointments to the office of Governor General and Commander-in-Chief in and over Canada shall be made by Commission under Our Great Seal of Canada.

*His Powers and Authorities*

II. And We do hereby authorize and empower Our Governor General, with the advice of Our Privy Council for Canada or of any members thereof or individually, as the case requires, to exercise all powers and authorities lawfully belonging to Us in respect of Canada, and for greater certainty but not so as to restrict the generality of the foregoing to do and execute, in the manner aforesaid, all things that may belong to his office and to the trust We have reposed in him according to the several powers and authorities granted or appointed him by virtue of The British North America Acts, 1867 to 1946 and the powers and authorities hereinafter conferred in these Letters Patent and in such Commission as may be issued to him under Our Great Seal of Canada and under such laws as are or may hereinafter be in force in Canada.

*Great Seal*

III. And We do hereby authorize and empower Our Governor General to keep and use Our Great Seal of Canada for sealing all things whatsoever that may be passed under Our Great Seal of Canada.

*Appointment of Judges, Justices, etc.*

IV. And We do further authorize and empower Our Governor General to constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers (including diplomatic and consular officers) and Ministers of Canada, as may be lawfully constituted or appointed by Us.

*Suspension or Removal from Office*

V. And We do further authorize and empower Our Governor General, so far as We lawfully may, upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office within Canada, under

or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

*Summoning, Proroguing, or Dissolving the Parliament of Canada*

VI. And We do further authorize and empower Our Governor General to exercise all powers lawfully belonging to Us in respect of summoning, proroguing or dissolving the Parliament of Canada.

*Power to Appoint Deputies*

VII. And Whereas by The British North America Acts, 1867 to 1946, it is amongst other things enacted that it shall be lawful for Us, if We think fit, to authorize Our Governor General to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Canada, and in that capacity to exercise, during the pleasure of Our Governor General, such of the powers, authorities, and functions of Our Governor General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed or given by Us: Now We do hereby authorize and empower Our Governor General, subject to such limitations and directions, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions, and authorities, as he may deem it necessary or expedient to assign to him or them: Provided always, that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority or function by Our Governor General in person.

*Succession*

VIII. And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal, or absence of Our Governor General out of Canada, all and every the powers and authorities herein granted to him shall, until Our further pleasure is signified therein, be vested in Our Chief Justice for the time being of Canada, (hereinafter called Our Chief Justice) or, in the case of the death, incapacity, removal or absence out of Canada of Our Chief Justice, then in the Senior Judge for the time being of the Supreme Court of Canada, then residing in Canada and not being under incapacity; such Chief Justice or Senior Judge of the Supreme Court of Canada, while the said powers and authorities are vested in him, to be known as Our Administrator.

Provided always, that the said Senior Judge shall act in the administration of the Government only if and when Our Chief Justice shall not be present within Canada and capable of administering the Government.

*Proviso. Administration to Take Oaths of Office Before  
Administering the Government*

Provided further that no such powers or authorities shall vest in such Chief Justice, or other judge of the Supreme Court of Canada, until he shall have taken the Oaths appointed to be taken by Our Governor General.

Provided further that whenever and so often as Our Governor General shall be temporarily absent from Canada, with Our permission, for a period not exceeding one month, then and in every such case Our Governor General may continue to exercise all and every the powers vested in him as fully as if he were residing within Canada, including the power to appoint a Deputy or Deputies as provided in the Eighth Clause of these Our Letters Patent.

*Officers and Others to Obey and Assist the Governor General*

IX. And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all the other inhabitants of Canada, to be obedient, aiding, and assisting unto Our Governor General, or, in the event of his death, incapacity, or absence, to such person as may, from time to time, under the provisions of these Our Letters Patent, administer the Government of Canada.

*Publication of Governor General's Commission Oaths to be Taken  
by Governor General, etc.*

X. And We hereby declare Our pleasure to be that Our Governor General for the time being shall, with all due solemnity, cause Our Commission under Our Great Seal of Canada, appointing Our Governor General for the time being, to be read and published in the presence of Our Chief Justice, or other Judge of the Supreme Court of Canada, and of members of Our Privy Council for Canada, and that Our Governor General shall take the Oath of Allegiance in the form following:—"I, \_\_\_\_\_ do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His Heirs and successors, according to law. So help me God"; and likewise he shall take the usual Oath for the due execution of the Office of Our Governor General and Commander-in-

Chief in and over Canada, and for the due and impartial administration of justice; which Oaths Our Chief Justice, or, in his absence, or in the event of his being otherwise incapacitated, any Judge of the Supreme Court of Canada shall, and he is hereby required to, tender and administer unto him.

*Oaths to be Administered by the Governor General*

XI. And We do authorize and require Our Governor General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to all and to every person or persons, as he shall think fit, who shall hold any office or place of trust or profit in Canada, the said Oath of Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

*Grant of Pardons*

*Remission of Fines. Regulations of Power of Pardon*

XII. And We do further authorize and empower Our Governor General, as he shall see occasion, in Our Name and on Our behalf, when any crime or offence against the laws of Canada has been committed for which the offender may be tried thereunder, to grant a pardon to any accomplice, in such crime or offence, who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further to grant to any offender convicted of any such crime or offence in any Court, or before any Judge, Justice, or Magistrate, administering the laws of Canada, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our Governor General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. And We do hereby direct and enjoin that Our Governor General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of Our Privy Council for Canada and, in other cases, the advice of one, at least, of his Ministers.

*Power to Issue Exequaturs*

XIII. And We do further authorize and empower Our Governor General to issue Exequaturs, in Our name and on Our behalf, to Consular Officers of foreign countries to whom Commissions of Appointment have been issued by the Heads of States of such countries.

*Governor General's Absence*

XIV. And whereas great prejudice may happen to Our Service and to the security of Canada by the absence of Our Governor General, he shall not quit Canada without having first obtained leave from Us for so doing through the Prime Minister of Canada.

*Power Reserved to His Majesty to Revoke, Alter or Amend the Present Letters Patent*

XV. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

*Publication of Letters Patent*

XVI. And We do further direct and enjoin that these Our Letters Patent shall be read and proclaimed at such place or places within Canada as Our Governor General shall think fit.

*Coming Into Effect of Letters Patent*

XVII. And We do further declare that these Our Letters Patent shall take effect on the first day of October, 1947.

IN WITNESS WHEREOF We have caused these Our Letters to be made Patent, and for the greater testimony and validity thereof, We have caused Our Great Seal of Canada to be affixed to these presents, which We have signed with Our Royal Hand.

GIVEN the 8th day of September in the Year of Our Lord One thousand Nine Hundred and Forty-Seven and in the Eleventh Year of Our Reign.

BY HIS MAJESTY'S COMMAND,

W. L. MACKENZIE KING,  
Prime Minister of Canada.

ROYAL COMMISSION APPOINTING THE EARL OF  
ATHLONE AS GOVERNOR-GENERAL OF CANADA,  
1940.

*GEORGE R.I.*

George the Sixth, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, KING, Defender of the Faith, Emperor of India; To Our Dear Uncle, Our Right Trusty and Well-Beloved Cousin and Counsellor, ALEXANDER AUGUSTUS FREDERICK GEORGE, Earl of Athlone, Knight of Our Most Noble Order of the Garter, Knight Grand Cross of Our Most Honourable Order of Saint Michael and Saint George, Knight Grand Cross of Our Royal Victorian Order, Companion of Our Distinguished Service Order, Colonel in Our Army (retired) having the honorary rank of Major-General, one of Our Personal Aides-de-Camp,

GREETING:—

WE Do, by this Our Commission under Our Sign Manual and Signet, appoint you, the said ALEXANDER AUGUSTUS FREDERICK GEORGE, Earl of Athlone, to be, during Our pleasure, Our Governor-General and Commander-in-chief in and over Our Dominion of Canada, with all the powers, rights, privileges and advantages to the said Office belonging or appertaining.

II. AND WE DO HEREBY authorize, empower and command you to exercise and perform all and singular the powers and directions contained in certain Letters Patent under the Great Seal, bearing date at Westminster the Twenty-third day of March, 1931, constituting the said Office of Governor-General and Commander-in-Chief, and in certain other Letters Patent under the Great Seal, bearing date at Westminster the Twenty-fifth day of September, 1935, amending the same, or in any other Letters Patent adding to, amending, or substituted for the same, according to such Orders and Instructions as Our Governor-General and Commander-in-Chief for the time being hath already received, or as you may hereafter receive from Us.



III. AND FURTHER WE DO HEREBY appoint that so soon as you shall have taken the prescribed oaths this Our Commission shall come into effect.

IV. AND WE DO HEREBY command all and singular Our Officers, Ministers, and loving subjects in Our said Dominion, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

GIVEN at Our Court at Saint James's this Second day of June, in the Fourth year of Our Reign.

BY HIS MAJESTY'S COMMAND,

W. L. MACKENZIE KING,  
Prime Minister of Canada.

## G. THE DECLARATION OF WAR, 1939

Nothing illustrates independence, it is said, better than the capacity to wage war separately. In 1914 the royal proclamation of war with Germany was issued on the advice of British ministers and applied to Canada as well as to all other British territories. In 1939, in accordance with the principles of 1926, it was agreed that His Majesty could not act for Canada except on the advice of Canadian ministers. The British proclamation was made on September 3, but the Canadian proclamation was not made until September 10. On the evening of September 9 the ministers secured approval of the Canadian Parliament for the declaration of war; the proclamation of the Canadian Privy Council was then cabled to London and presented by the Canadian High Commissioner to the King for his assent. When news of the royal approval was received, the proclamation was published in a special issue of the *Canada Gazette*, September 10, bearing the seal of the Governor General and the countersignature of the Prime Minister.

Since that time other separate proclamations of war have been made: with the formal approval of Parliament as in the case of Italy (June 10, 1940) and without it as in the case of Japan (December 7, 1941). The latter case is interesting because the Canadian proclamation preceded the British by a few hours. Canada, it may be remarked, did not sever relations with Vichy France for three years, although Britain and the United States had done so.

## PROCLAMATION OF WAR

TWEEDSMUIR

CANADA

GEORGE THE SIXTH, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith, Emperor of India.

To All to Whom these Presents shall come or whom the same may in anywise concern,

GREETING:

### A PROCLAMATION

Ernest Lapointe,  
Attorney General,  
Canada.

Whereas by and with the advice of Our Privy Council for Canada we have signified Our Approval of the issue of a Proclamation in the *Canada Gazette* declaring that a State of War with the German Reich exists and has existed in Our Dominion of Canada as and from the tenth day of September, 1939.

Now therefore We do hereby declare and proclaim that a State of War with the German Reich exists and has existed in Our Dominion of Canada as and from the tenth day of September, 1939.

Of all which Our Loving Subjects and all others whom these presents may concern are hereby required to take notice and to govern themselves accordingly.

In testimony whereof We have caused these Our Letters to be Made Patent and the Great Seal of Canada to be hereunto affixed. WITNESS: Our Right Trusty and Well-beloved John, Baron Tweedsmuir of Elsfield, a Member of Our Most Honourable Council, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross

of Our Royal Victorian Order, Member of Our Order of the Companions of Honour, Governor General and Commander-in-chief of Our Dominion of Canada.

At Our Government House, in Our City of Ottawa, this tenth day of September, in the year of Our Lord One thousand nine hundred and thirty-nine and in the Third year of Our Reign.

By Command,

W. L. Mackenzie King,  
*Prime Minister of Canada.*

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